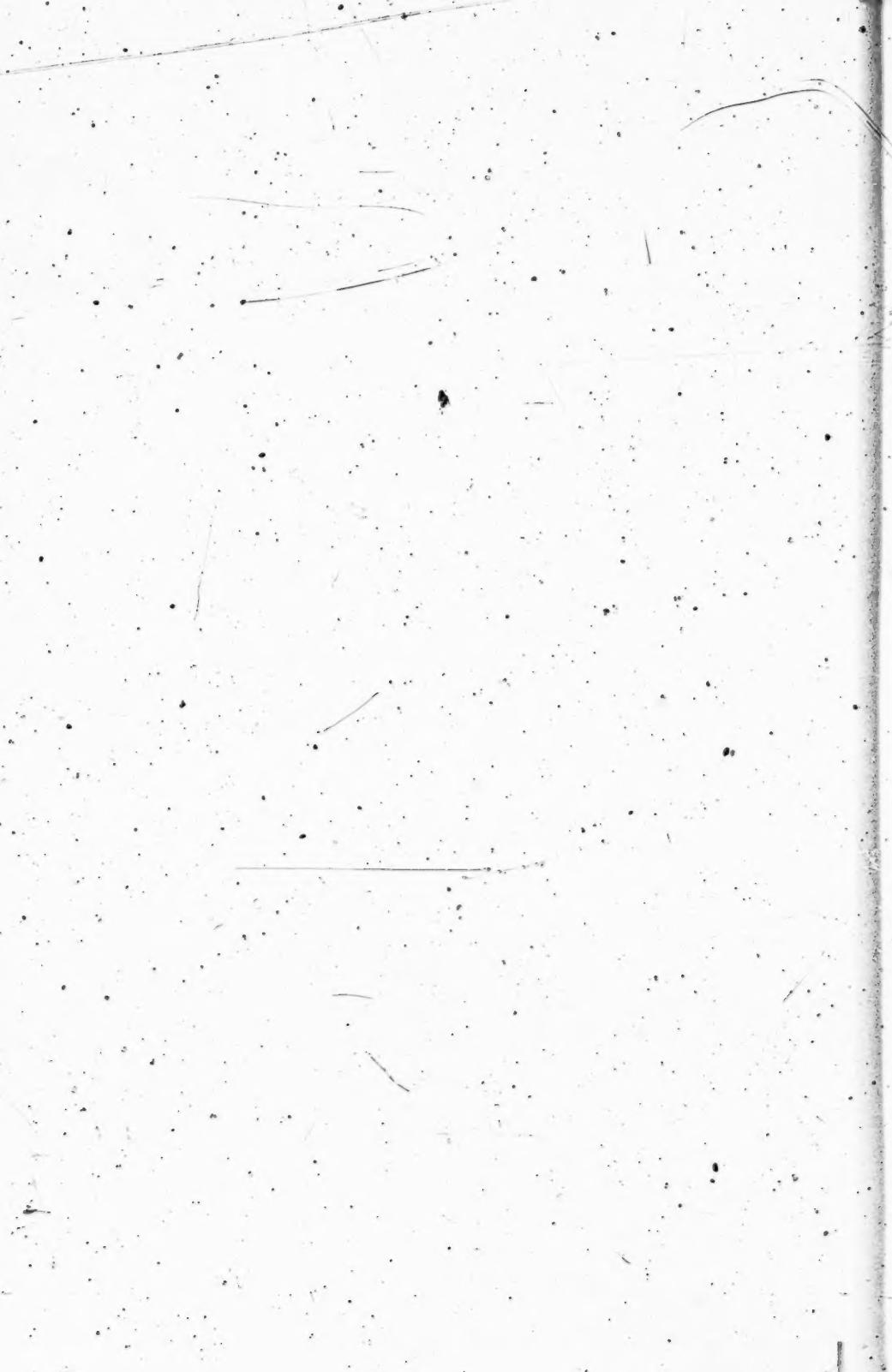


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THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES:

For Taxpayer: CAMPBELL E. LOCKE,
DONALD M. DUNN, Esq.,
JOHN L. GRANT, Esq.

For Comm'r.: T. H. LEWIS, Esq.,
L. A. SPALDING, Esq.

Docket Entries.

1937

June 1—Petition received and filed. Taxpayer notified.
(Fee paid.)

June 1—Copy of petition served on General Counsel.

July 21—Answer filed by General Counsel.

July 27—Copy of Answer served on taxpayer.

Nov. 27.—Notice issued placing proceeding on New York
City Calendar.

1938

Oct. 18—Hearing set Nov. 28, 1938, New York, N. Y.

Nov. 28—Hearing had before Mr. Murdock on motion of
petitioner to continue to December 12, 1938. Granted
and continued to 12/12/38 at New York City. Peti-
tioner's motion to continue filed.

Dec. 7—Hearing set Dec. 12, 1938, New York City.

Dec. 9—Hearing had before Mr. Disney on motion of
parties to continue—granted—and continued to next
Circuit Calendar.

Docket Entries.

Dec. 9—Order of continuance to the Next New York City Circuit Calendar, entered.

Dec. 15—Hearing set Jan. 9, 1939, New York, N. Y.

1939

Jan. 9—Hearing had before Mr. Hill. On motion of parties to continue this proceeding for 60 days, motion granted, and proceeding continued for 60 days. Said proceeding will remain on the New York Circuit Calendar. Motion for continuance and entry of appearance of Donald M. Dunn filed at hearing.

5 Mar. 6—Hearing set May 8, 1939 in New York City, N. Y.

Apr. 15—Motion for leave to amend answer, amended answer lodged, filed by General Counsel: 4/17/39 granted.

May 17—Hearing had before Mr. Opper. Because of delay in preparing complete stipulation of facts, and amended pleadings, Member on own motion continued to New York, N. Y., Calendar of May 22, 1939.

May 17—Order of continuance to the New York, N. Y., Calendar of May 22, 1939, entered.

May 26—Hearing had before Mr. Sternhagen on merits. Submitted. On oral motion of petitioner to consolidate with Docket 93805, granted and consolidated for hearing. Petitioner's motion to file amendments to petition filed and granted. Respondent's motion to file "second amended answer to petition and answer to amendment of petition filed and granted. Petitioner's oral motion to file reply to amended answer and to second amended answer, granted. Stipulation of facts filed. Reply to amended answer filed. Briefs due as per rules.

[2] June 9—Transcript of hearing of May 26, 1939 filed.

June 9—Copy of motion and amended petition served on General Counsel.

June 9—Copy of motion and reply served on General Counsel.

Docket Entries.

July 6—Motion for extension to Aug. 10, 1939 to file brief, filed by taxpayer. 7/7/39 granted.

July 6—Motion for extension of 30 days to file brief filed by General Counsel. 7/7/39 granted.

Aug. 1—Motion for leave to file amendment of replies, replies lodged, filed by taxpayer.

Aug. 1—Motion for leave to file amendment of petition, amendment lodged, filed by taxpayer.

Aug. 4—Hearing set Aug. 23, 1939 on motion.

Aug. 5—Copy of motion and notice of hearing served on General Counsel.

Aug. 8—Answer to amendments of petition as heretofore amended (dated July 1939), filed by General Counsel.

Aug. 9—Brief filed by taxpayer.

Aug. 9—Motion that answers to the amendments of petition stand as answers to the second amended petitions, filed by General Counsel.

Aug. 9—Motion that supplementary stipulation of facts be received and filed as part of the evidence filed by General Counsel. Supplementary stipulation of facts filed. 8/10/39 granted.

Aug. 10—Motion for leave to file the attached brief, brief lodged, filed by General Counsel. 8/11/39 granted.

Aug. 12—Copy of brief served on General Counsel.

Aug. 14—Proposed findings of fact filed by taxpayer. 8/15/39 copy served on General Counsel.

Aug. 16—Motion for extension to Sept. 18, 1939 to file reply brief, filed by taxpayer. 8/17/39 granted.

Aug. 21—Motion of Aug. 1, 1939 to file amendment of replies, granted, consented to by General Counsel.

Aug. 21—Motion of Aug. 1, 1939 to file amendments of petition granted. Consented to by General Counsel.

Aug. 21—Motion of 8/9/39 for continuance—granted to 9/18/39.

Aug. 22—Copy of motion and amendment to petition served on General Counsel.

*Docket Entries.**1941*

Jan. 8—Motion for leave to file the attached supplementary brief filed by taxpayer. 1/9/41 granted.
Jan. 9—Supplemental brief filed by taxpayer.
Jan. 9—Copy of motion and supplemental brief served on General Counsel.
Apr. 11—Notice of appearance of John L. Grant as counsel for taxpayer filed.
Apr. 29—Opinion rendered, Smith, Div. 5. Decision will be entered under Rule 50. 4/30/41 copies served.
11 [3] July 5—Computation of deficiency filed by General Counsel.

July 9—Hearing set July 23, 1941 on settlement.
July 16—Consent to settlement filed by taxpayer.
July 17—Decision entered. Arundell, Div. 7.
Oct. 7—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
Oct. 16—Proof of service filed by taxpayer.
Oct. 24—Proof of service filed.
Nov. 18—Order enlarging time to Feb. 4, 1942 to prepare and deliver the record, entered.
12 Nov. 25—Praeclipe for record filed by taxpayer—with proof of service thereon.

[4]

13

UNITED STATES BOARD OF TAX APPEALS

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

vs.

Petitioner,

Docket No.
89294.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

14

Petition.

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated March 6, 1937 and for a determination of the petitioner's over-payment of tax in respect of the taxable year involved, and as a basis of its proceeding alleges as follows:

1. The petitioner (hereinafter called the taxpayer), is a life insurance company. It is a corporation organized and existing under the laws of the State of New York, with its principal office at 393 Seventh Avenue, in the Borough of Manhattan, City, County and State of New York.
2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on March 6, 1937.
3. The taxes in controversy are income taxes for the calendar year 1933 and in the amount of \$428,016.05 plus interest. Deficiencies of \$160,338.66 with interest of \$21,829.57 making a total of \$182,168.23 have been assessed

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Petition.

and collected. The petitioning taxpayer claims that it is entitled to a refund of \$182,168.23 all of which was paid within two years before the filing of this petition.

[5] 4. The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

17. a. The Commissioner erred in failing to allow a deduction in the amount of \$19,947.50 being a $3\frac{3}{4}\%$ of the mean of the funds held by the taxpayer at the beginning and end of the taxable year as its reserve called "unearned premiums" listed in the Accident and Health Supplements to its annual statements; the maintenance of this reserve being required by the laws of the states in which the taxpayer was then doing business, and the funds so held being "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Act of 1932.

18. b. The Commissioner erred in failing to allow a deduction in the amount of \$59,677.67 being a $3\frac{3}{4}\%$ of the mean of the funds held by the taxpayer at the beginning and end of the taxable year as its reserve called "Additional reserve on non-cancellable accident and health policies" listed in the Accident and Health Supplements to its annual statements; the maintenance of this reserve being required by the laws of the states in which the taxpayer was then doing business, and the funds so held being "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Act of 1932.

c. The Commissioner erred in failing to allow deduction in the amount of \$144,371.43 being $3\frac{3}{4}\%$ of the mean of [6] the funds held by the taxpayer at the beginning and end of the taxable year as that part of its reserve called "Unpaid and unresisted claims" listed in the Accident and Health Supple-

ments to its annual statements which was held in respect of contingent obligations; the maintenance of this reserve being required by the laws of the states in which the taxpayer was then doing business, and the funds so held being "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Act of 1932.

d. The Commissioner erred in failing to allow a deduction in the amount of \$1,746,851.83 being 3 $\frac{3}{4}$ % of the mean of the funds held by the taxpayer at the beginning and end of the taxable year as its reserve called "Present value of amounts incurred but not yet due for total and permanent disability benefits less reinsurance" listed as item 9, page 5 of its annual statements; the maintenance of this reserve being required by the laws of the states in which the taxpayer was then doing business, and the funds so held being "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Act of 1932. 20

e. The Commissioner erred in failing to allow a deduction in the amount of \$1,516,477.58 being 3 $\frac{3}{4}$ % of the mean of the funds held by the taxpayer at the beginning and end of the taxable year as its reserve called "Present [7] value of amounts not yet due on supplementary contracts not involving life contingencies, computed by the Society excluding disability claims included in item 9" listed as item 10, page 5 of its annual statements; the maintenance of this reserve being required by the laws of the states in which the taxpayer was then doing business, and the funds so held being "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Act of 1932. 21

f. The Commissioner erred in failing to allow a deduction in the amount of \$211,998.99 being 3 $\frac{3}{4}$ %

Petition.

of the mean of the funds held by the taxpayer at the beginning and end of the taxable year as its reserve called "Gross premiums paid in advance, including surrender values so applied, less discount, if any" listed as item 21, page 5, of its annual statements; the maintenance of this reserve being required by the laws of the states in which the taxpayer was then doing business, and the funds so held being "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Act of 1932.

g. The Commissioner erred in failing to allow a deduction provided by section 203 (a) (8) of the Act, in the amount of \$706,249.82 being the interest which accrued on the taxpayer's supplementary contracts during the taxable year in excess of the guaranteed rate and which was paid by the taxpayer during the taxable year.

h. The Commissioner erred in failing to allow a deduction provided by section 203 (a) (8) of the Act, in the amount of \$13,432.49 being interest which had accrued prior to the taxable year at the guaranteed rate, on the taxpayer's supplementary contracts and which was paid by the taxpayer during the taxable year.

i. The Commissioner erred in failing to allow a deduction provided by section 203 (a) (8) of the Act, in the amount of \$4,525.68 listed as the last item under "Disbursements" in the Accident and Health Supplement to the taxpayer's annual statement, and being interest which had accrued on the taxpayer's indebtedness for premiums paid in advance by Accident and Health policyholders, and which was paid by the taxpayer during the taxable year.

j. The Commissioner erred in failing to allow a deduction provided by section 203 (a) (7) of the Act,

in the amount of \$222,740.00 (listed in item 34 (b) page 3 of the taxpayer's annual statements) this being the amount of a reasonable allowance for the year for the exhaustion of the taxpayer's property in bonds which the taxpayer had purchased at premiums.

k. The Commissioner erred in failing to allow a deduction provided by section 203 (a) (7) of the Act, in the amount of \$10,747.59 this being the amount of a reasonable allowance for the year for the depreciation of the taxpayer's home office building in respect of the [9] architects' and engineers' fees and other capitalized expenses paid by the taxpayer in the construction of that building.

26

l. The Commissioner erred in failing to allow a deduction provided by section 203 (a) (5) of the Act, for investment expenses in the amount of \$422,745.25 this being the sum of defaulted interest included in the prices bid by the taxpayer during the taxable year for properties, over and above the values of the respective properties, which the taxpayer foreclosed that year in states where local laws provided for redemption upon payment of the bid price, and which was included in such bid prices solely for the purpose of insuring the taxpayer against those further losses it would in all probability have suffered on the aggregate investments it had made in loans on these properties, had it bid only the market values of the respective properties.

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m. The Commissioner erred in failing to allow a deduction in the amount of \$40,000 provided by section 203 (a) (5) (6) and (7) of the Act in respect of fire insurance covering certain real estate then owned by the taxpayer.

Petition.

n. The Commissioner erred in failing to allow a deduction provided by section 203 (a) (7) of the Act in the amount of \$202,730 this being the amount of a reasonable allowance for the taxable year 1933 for the depreciation of the buildings and improvements on the farms then owned by the taxpayer.

[10] 5. The facts upon which the petitioning taxpayer relies as the basis of this proceeding are as follows:

GENERAL FACTS

a. The taxpayer is a corporation duly organized and existing under and by virtue of the laws of the State of New York. It commenced business in that State in the year 1859 as a stock life insurance company and was converted under the Insurance Law of New York to a mutual life insurance company in the year 1925. From the year 1859 continuously to the present time, the taxpayer has been duly authorized to transact the business of life insurance and other kinds of insurance in the State of New York and has been transacting such business in that State pursuant to the laws thereof.

b. From some time prior to the taxable year 1933 continuously to the present time, the taxpayer has been duly authorized in every State of the United States, except Texas, to transact business of issuing life insurance and annuity contract and has been transacting that business in each such State pursuant to the laws thereof. During this entire time more than fifty per centum of the taxpayer's total reserve funds have been held for the fulfillment of its life insurance and annuity contracts.

c. From some time prior to the taxable year 1933, continuously to the present time the Insurance Law of the State [11] of New York, being Chapter 35 of

the Laws of 1909 of said State as amended has provided among other things that there shall be a separate and distinct department charged with the execution of the laws relating to insurance, to be known as the Insurance Department, the chief officer of which shall be the Superintendent of Insurance (hereinafter called the Superintendent).

d: From some time prior to the taxable year 1933, continuously to the present time Section 103 of said Insurance Law has provided among other things that every life insurance corporation doing business in the State of New York shall make an annual report to the Superintendent on printed forms caused to be prepared and furnished by him and that this report shall contain a complete statement of certain matters.

32

e. For the taxable year 1933 and for the preceding taxable year the taxpayer made annual reports (herein called annual statements) to the Superintendent upon blanks which were furnished by him and which were in the form adopted for life insurance companies by the National Convention of Insurance Commissioners.

33

FACTS RELATING PARTICULARLY TO ERRORS 4 a, b, AND c.

f: During and prior to the calendar year 1933, the taxpayer issued accident and health policies insuring the holders thereof against loss from bodily injuries effected through external, violent and accidental [12] means, and against disability from disease. Certain of these policies outstanding during the calendar year 1933 were non-cancellable. For the fulfillment of its obligations in respect of these policies the taxpayer maintained throughout the taxable year 1933 and prior thereto, reserve funds accumulated at interest from premiums. The amounts

Petition.

of these reserve funds held by the taxpayer at the beginning and end of the taxable year in respect of contingent obligations were as follows:

	<i>Beginning of Year</i>	<i>End of Year</i>
Unearned premiums . . .	\$ 547,648.51	\$ 516,218.34
Unpaid and unresisted		
Claims	3,771,600.00	4,783,746.00
Additional Reserve on		
Non-cancellable policies	1,593,248.00	1,589,561.00

g. Each of these reserve funds, as maintained with annual interest increments, was necessary to meet the obligations for which it was held, and was required by the statutes of the states in which the taxpayer was doing business and by the rulings of state officials made pursuant to authority conferred by those statutes. All of these funds were "reserve funds required by law within the meaning of section 203 (a) (2) of the Revenue Act of 1932. The deductions in respect of these reserve funds provided by that section of $3\frac{3}{4}\%$ of the means of the amounts held at the beginning and end of the taxable year are as follows:

Reserve

	<i>Deduction provided by sec. 203 (a) (2)</i>
Reserve for Unearned A & H premiums	\$ 19,947.50
Reserve for unpaid and unresisted A & H claims	144,371.43
Additional Reserve on non-cancellable A & H policies	59,677.67

The Commissioner, in computing the tax which the taxpayer here petitions to have redetermined,

allowed no deduction in respect of these or any other reserve held by the taxpayer for the fulfillment of its obligations in respect of its accident and health business.

FACTS RELATING PARTICULARLY TO ERRORS 4 d, e AND f.

h. For the fulfillment of its obligations in respect of certain provisions in its policies known as "total and permanent disability provisions", the taxpayer maintained throughout the taxable year 1933 and prior thereto a fund accumulated at interest from premiums for its reserve called "Present value of amounts incurred but not yet due for total and permanent disability benefits, less reinsurance" (Annual Statements, page 5, Item 9). This reserve fund was maintained and held to meet the payment of contingent benefits which might become due in the future in respect of disabilities which had already commenced.

38

i. For the fulfillment of its obligations in respect of its policy provisions known as "Supplementary Contracts [14] not involving life contingencies" the taxpayer maintained throughout the taxable year 1933 and prior thereto a fund accumulated at interest from premiums for its reserve known as "Present value of amounts not yet due on Supplementary Contracts not involving life contingencies, computed by the Society excluding disability claims included in item 9" (Annual Statements, page 5, item 10). This reserve fund was maintained and held to meet the payments which would become due in the future under these supplementary contract provisions.

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j. For the fulfillment of its policy obligations the taxpayer maintained throughout the taxable year 1933 and prior thereto a fund accumulated at inter-

Petition.

est from premiums paid in advance on its life business for its reserve known as "Gross premiums paid in advance, including surrender values so applied, less discount, if any" (Annual Statements, page 5, item 21). This reserve fund was maintained and held as an essential part of the actuarial reserves necessary to meet the payment of future death benefits and other future contingent policy benefits.

k. The amounts of these reserve funds held by the taxpayer at the beginning and end of the taxable year 1933 were as follows:

		<i>Beginning of Year</i>	<i>End of Year</i>
[15]	<i>Reserve Fund</i>		
	Present value of amounts incurred but not yet due for total and permanent disability benefits, less reinsurance	\$43,643,616.00	\$49,521,615.00
	Present value of amounts not yet due on Supplementary Contracts not involving life contingencies computed by the Society excluding disability claims included in item 9	36,739,376.00	44,139,428.00
	Gross premiums paid in advance, including surrender values so applied, less discount if any	5,120,972.64	6,185,639.99

1. Each of these reserve funds, as maintained with annual interest increments, was necessary to

meet the obligations for which it was held, and was required by the statutes of the states in which the taxpayer was doing business and by the rulings of state officials made pursuant to authority conferred by these statutes. All of these funds are "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Act of 1932. The deductions in respect of these reserve funds provided by that section of $3\frac{3}{4}\%$ of the mean of the amounts held at the beginning and end of the taxable year are as follows:

Reserve Fund

*Deduction
provided by
sec. 203 (a) (2)*

Present value of amounts incurred but not yet due for total and permanent disability benefits less reinsurance	\$1,746,851.83
[16] Present value of amounts not yet due on Supplementary Contracts not involving life contingencies computed by the Society, excluding disability claims included in item 9	1,516,477.59
Gross premiums paid in advance including surrender values so applied less discount if any	211,998.99
The Commissioner in computing the tax which the taxpayer here petitions to have redetermined, failed to allow the deductions provided by section 203 (a) (2) of the Revenue Act of 1932 in respect of any of these reserve funds.	45

FACTS RELATING PARTICULARLY TO ERRORS 4 g, h AND i.

m. The policy provisions known as "Supplementary Contracts not involving life contingencies"

Petition.

in force and outstanding throughout the year 1933 and prior thereto, required the taxpayer to pay interest on its indebtedness covered by these provisions at a specified minimum guaranteed rate and also in excess amounts if these excess amounts should be earned. The payment of this interest both at the guaranteed rate and in the excess amounts which might be earned was required not only by the contract provisions themselves but by the statutes of the States in which the petitioner was doing business and by the rulings of State officials made pursuant to the authority conferred by those statutes.

[17] n. During the taxable year 1933 the taxpayer paid as so required such earned excess interest, which accrued during that year, in the amount of \$706,249.82. The Commissioner, in computing the tax which the taxpayer here petitions to have redetermined, allowed the deduction authorized by section 203 (a) (8) of the Revenue Act of 1932 of \$1,118,594.00 guaranteed interest which, during the taxable year, accrued and was paid by the taxpayer on its indebtedness covered by these "Supplementary contracts not involving life contingencies" but failed to allow the deduction authorized by the same section of the above stated \$706,249.82 earned excess interest which, during the taxable year, accrued and was paid by the taxpayer on this same indebtedness.

o. During the taxable year the taxpayer paid guaranteed interest in the amount of \$13,432.49 which had accrued in prior years on the indebtedness covered by the above mentioned "Supplementary Contracts not involving life contingencies." The Commissioner, in computing the tax which the tax-

payer here petitions to have redetermined, failed to allow any deduction in respect of this \$13,432.49. A deduction of the full amount thereof is authorized by section 203 (a) (8) of the Revenue Act of 1932.

p. During the taxable year and prior thereto the taxpayer had accepted funds from certain accident and health [18] policyholders agreeing with each such policyholder that such funds accepted from him would be held on demand, supplemented with interest, and applied in payment of premiums subsequently becoming due on his policy. During the taxable year, in accordance with such agreements, the taxpayer supplemented such funds with interest in the amount of \$4,525.68 and applied such supplemented funds including that interest in payment of such premiums. The Commissioner, in computing the tax which the taxpayer here petitions to have redetermined, failed to allow any deduction in respect of this \$4,525.68. A deduction of the full amount thereof is authorized by section 203 (a) (8) of the Revenue Act of 1932.

50

FACTS RELATING PARTICULARLY TO ERRORS 4, j AND k.

51

q. During the taxable year and prior thereto the taxpayer purchased certain bonds at prices in excess of par. The premium or amount in excess of par paid by the taxpayer for each of these bonds was the reasonable value at the time of the purchase, of the interest payable on the bond to its maturity in excess of the rate of interest which similar first grade bonds then being issued had to carry in order to be marketed at par. By adjustment entries in its annual statements (item 34 (b) page 3) the taxpayer decreased its assets each year by the year's portion of each such premium prorated [19] to the

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Petition.

maturity of the bond. For the taxable year 1933, the taxpayer's assets were so decreased by \$222,740.00 being the aggregate of that year's portion of such premiums so prorated; and being the amount of a reasonable allowance for the year for the exhaustion of the taxpayer's property in the bonds which it had purchased at premiums. A deduction of the full amount of this exhaustion of the taxpayer's assets is authorized by section 203 (a) (7) of the Revenue Act of 1932. The Commissioner, in computing the tax which the taxpayer here petitions to have re-determined, allowed no deduction in respect of this exhaustion of assets.

53

r. Throughout the taxable year 1933 the taxpayer owned and in part occupied its home office building at 393 Seventh Avenue, New York City. As part of the original cost of this building the taxpayer paid architects' and engineers' fees and certain other capitalized expenses in the amount of \$1,651,214.92. A reasonable allowance for the taxable year 1933 for the depreciation of that property in respect of these capitalized expenses, as authorized by section 203 (a) (7) of the Revenue Act of 1932 is \$41,280.37 being 2½% of the amount so spent and capitalized. For the taxable year 1933 the rental values of the space in this building not then occupied by the taxpayer was \$407,217.09 and of the entire building \$1,564,078.35. The ratio of these amounts (26.0356%) applied to \$41,280.37 (the reasonable allowance for depreciation in respect of the [20] above mentioned capitalized expenses) is \$10,747.59. In accordance with the provisions of section 203 (a) (7) of the Revenue Act of 1932, as modified by section 203 (b) of that Act, the taxpayer is entitled to a deduction of this \$10,747.59 for depreci-

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Petition.

tion of its home office building in respect of the above mentioned capitalized expenses. The Commissioner, in computing the tax which the taxpayer here petitions to have redetermined, allowed no deduction for the depreciation of that building in so far as that building represents these architects' and engineers' fees and the other above mentioned capitalized expenses paid by the taxpayer in its construction.

FACTS RELATING PARTICULARLY TO ERROR 4 1.

s. During the year 1933, the taxpayer foreclosed various mortgages in States where the local laws provided for redemption by the debtor or junior encumbrancer upon payment of the price bid at the foreclosure sale. In bidding in the properties here involved, the taxpayer was faced with the probability of sustaining further losses on the aggregate investments it had made in loans on these properties if it should bid only the market values of the respective properties. The taxpayer, at the foreclosure sales, bid in each property for an amount larger than the defaulted principal of the mortgage plus foreclosure costs. The bids made by the taxpayer were respectively greater than the values [21] of the properties. These excess amounts, over the values of the properties, were bid solely for the purpose of insuring against further loss on the aggregate investments involved.

t. The aggregate of the amounts by which the bid prices respectively exceeded the sum of the unpaid principal plus foreclosure costs or the value of the property, whichever was greater, is \$422,745.25. The Commissioner in computing the tax, which the taxpayer here petitions to have redetermined, has included this aggregate in gross income

Petition.

and has allowed no deduction in respect of it. A deduction of the full amount thereof is provided by section 203 (a) (5) of the Revenue Act of 1932.

59 u. The book value of the invested assets held by the taxpayer was \$1,415,527,735.08 at the beginning of the taxable year and \$1,445,456,222.12 at the end thereof. One-fourth of one per centum of the mean of these amounts is \$3,576,230.00. The total deduction for investment expenses allowed by the Commissioner, under section 203 (a) (5) of the Revenue Act of 1932, in computing the taxes which the taxpayer here seeks to have redetermined, amounted to \$2,606,147.72.

FACTS RELATING PARTICULARLY TO ERROR 4 in.

60 v. During the taxable year 1933 and prior thereto the taxpayer acquired various properties by foreclosure of mortgages which it held or by accepting deeds in lieu [22] of such foreclosure. Prior to such acquisition the taxpayer had paid the premiums on fire insurance policies covering the properties for 1933 and subsequent years. These premiums were paid for the account of the taxpayer's borrowers who then owned the properties. The amounts of such premiums were added to the debts owed to the taxpayer and secured by mortgages held by the taxpayer. The amounts paid by the taxpayer for the acquisition of these properties included the cost of such fire insurance coverage. The cost, so included and paid by the taxpayer, for such coverage for that part of 1933 during which the taxpayer owned these respective properties, amounted to \$40,000. The cost so included and paid by the taxpayer in 1933, for such coverage for that part of 1933 and subsequent years during which the tax-

payer owned these respective properties, was in excess of \$40,000. The Commissioner in computing the taxes which the taxpayer here petitions to have redetermined, failed to allow any deduction for the amounts paid by the taxpayer for this fire insurance coverage, or for the exhaustion of such coverage which occurred during the taxable year 1933. A deduction of at least \$40,000 for the amounts paid by the taxpayer for this coverage or for such exhaustion of the coverage is provided by section 203 (a) (5) (6) and (7) of the Revenue Act of 1932.

62

[23] FACTS RELATING PARTICULARLY TO ERROR 4 b.

w. During the taxable year 1933 the taxpayer owned a large number of farms improved by houses, barns, silos, cribs, sheds, pens, and other farm buildings, all acquired by the taxpayer subsequent to the year 1913. These improvements were acquired by the taxpayer at a cost of \$4,054,000. A reasonable allowance for the depreciation of these improvements while owned by the taxpayer during the year 1933, as provided by section 203 (a) (7) of the Revenue Act of 1932 is \$202,730. The Commissioner, in computing the taxes which the taxpayer here petitions to have redetermined, allowed no deduction for the depreciation of these improvements.

63

RES ADJUDICATA.

x. Except for the amounts involved, the issues presented in Assigned Errors 4 b and c are res adjudicata having been decided in the taxpayer's favor by the decision of the Board of Tax Appeals promulgated December 12, 1935 in the case of The Equitable Life Assurance Society of the United

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Petition.

States v. Commissioner 33 B. T. A. 708. No appeal from that decision was taken and that decision has become final. The reserves, in respect of which deductions are here claimed by the taxpayer in assigned errors 4 b and c of this petition, are the same reserves, computed in the same manner, held for the same purposes, primarily for the identical policies and otherwise for exactly similar policies, and are required by the same laws as the reserves involved in that case. The provisions of section [24] 203 (a) (2) of the Revenue Act of 1932 which provide the deductions for these reserves claimed in this petition, are, in so far as the taxpayer's right to the deductions is concerned, the same as the provisions of the Revenue Acts which were involved in that case.

65

y. Except for the amount involved, the issues presented in assigned error 4 d are res adjudicata having been decided in the taxpayer's favor by the above cited decision of the Board of Tax Appeals from which no appeal was taken and which has become final. The taxpayer's right to a deduction in respect of this reserve was not disputed in that case but this right is determined by the same issues there decided.

66

WHEREFORE, the petitioning taxpayer prays that this Board may hear this proceeding and

1. redetermine the deficiency asserted by the Commissioner for the taxable year 1933;
2. redetermine the petitioner's income taxes for such taxable year free from the errors assigned herein;
3. determine the amount of overpayments of tax made by the petitioner in respect of the taxable year 1933 and

Petition.

that such overpayments were made within two years before the filing of this petition; and

4. grant to the petitioner such other and further relief as may appear to this Board to be just and proper in the premises.

CAMPBELL E. LOCKE,
Counsel for the Petitioner,
120 Broadway,
New York, N. Y.

[25]

State of New York, {ss.
County of New York, {ss.

ANDREW E. TUCK, being duly sworn, says that he is a Vice-President of The Equitable Life Assurance Society of the United States, the petitioner above named, and as such is duly authorized to verify the foregoing petition; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true.

ANDREW E. TUCK.

Subscribed and sworn to before me
on this 28th day of May 1937.

HENRY M. ENSOR,
Notary Public, Bronx County No. 30, Reg. No. 25-E-39.
Cert. filed in N. Y. Co. No. 155, Reg. No. 9-E-108.
Commission Expires March 30, 1939.

(Seal)

70 [26]

Exhibit "A."**TREASURY DEPARTMENT****WASHINGTON**

Office of
Commissioner of Internal Revenue

Address Reply to
Commissioner of Internal Revenue
 And Refer To

71

March 6, 1937.

The Equitable Life Assurance Society
 of the United States,
 393 Seventh Avenue,
 New York, New York.

Sirs:

You are advised that the determination of your income tax liability for the taxable year(s) 1933 discloses a deficiency of \$267,677.39 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned.

72 Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest

Exhibit "A."

73

period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.

By W. T. SHERWOOD,
Deputy Commissioner.

Enclosures:

Statement

74

Form 870

Schedules 1 and 2

{27]

STATEMENT.

IT:A:6

JHP:90D.

In re: The Equitable Life Assurance Society
of the United States
393 Seventh Avenue,
New York, New York.

75

Income Tax Liability

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1933	\$428,016.05	\$160,338.66	\$267,677.39

The deficiency shown herein is based upon the reports dated January 28, 1936 and March 13, 1936, prepared by Internal Revenue Agent F. Newton and transmitted to you under dates of January 30, 1936 and March 20, 1936 and upon such adjustments as are shown in the attached schedules numbered 1 and 2.

Exhibit "A."

In arriving at the above result careful consideration has been given to the additional information contained in your memorandum submitted by the internal revenue agent in charge, 807 United States Post Office Building, New York, New York, under date of June 17, 1936 relative to reserve items set forth on page 5, items 9 and 11 of the annual statement for the year 1933 and at a conference held in Washington, D. C., on October 29, 1936 and, also, to the additional information submitted by the above-mentioned internal revenue agent in charge under date of January 23, 1937, relative to the amount paid in the year 1933 for repairs and renovations for the purpose of placing properties acquired through foreclosure proceedings in a rentable condition.

[28] The Equitable Life Assurance Society
of the United States

Year ended December 31, 1933.

SCHEDULE 1

Adjustments to Net Income

Net loss as disclosed by return	\$ 443,336.52
As corrected—Net income	3,157,461.74
<hr/>	
Net adjustment as computed below—Addition to income	\$ 3,600,798.26
<hr/>	
Unallowable deductions and additional income:	
(a) Depreciation on permanent equipment and furniture and fixtures	\$ 254,965.00
(b) Accrued interest on foreclosed mortgages	680,650.85

Exhibit "A."

79

(c) 3 3/4% of mean reserve funds overstated	3,447,563.12
(d) Interest on premiums paid in advance	4,525.68
(e) Capital expenditures included in repairs and expenses	336,738.89
Total	\$4,724,443.34

Non-taxable income and additional deductions:

80

(f) Interest paid supplementary contracts	\$1,118,594.00
(g) Depreciation — Capital expenditures	5,051.08
Total	1,123,645.08

Net adjustment as above—Addition to income

\$3,600,798.26

[29]

SCHEDULE 1-A.

81

Explanation of Items

(a) Gross income, page 2 annual statement	\$353,060,941.30
---	------------------

Less: Annual statement, page 2:

Line 9—Consideration for supplementary contracts involving life contingencies \$2,396,784.57

Line 9A—Consideration for disability claims. 89,128.49

Exhibit "A."

Line 10-Consideration for supplementary contracts not involving life contingencies	15,044,699.53
Line 11-Dividends left with company	3,587,293.24
Line 11A-Interest dividend deposits	473,817.78
Line 20-Rent own occupancy	1,149,996.26
Line 22(b)-Suspense items	2,157,515.89
	<hr/>
Gross income adjusted	\$328,161,705.54
Gross investment—Income shown on return	\$ 61,172,532.08
Percentage which gross investment income is of total gross income	18.64%
Depreciation taken, schedule 12, return:	
Pneumatic Tubes	\$ 27,407.00
Furniture and fixtures	285,972.00
Depreciation allowable, (18.64% of \$313,379.00)	\$ 313,379.00
	<hr/>
Excessive depreciation disallowed	\$ 58,414.00
	<hr/>
Excessive depreciation disallowed	\$ 254,965.00

[30] The depreciation allowable has been computed in accordance with the decision of the United States Supreme Court rendered May 21, 1934 in the case of Rockford Life Insurance Company.

(b) Accrued interest on foreclosed mortgages constitutes taxable income when mortgagee acquires title to property at foreclosure for amount equal to loans, costs and interest in accordance with the decision of the United

Exhibit "A."

States Supreme Court rendered February 15, 1937 in the case of Midland Mutual Life Insurance Company.

(c) Amended reserves

December 31, 1932 December 31, 1933

	<i>December 31, 1932</i>	<i>December 31, 1933</i>	
Outstanding policies and annuities	\$1,134,759,132.00	\$1,168,581,172.00	
Disability and accidental death benefits	26,664,523.00	29,617,020.00	
	<hr/>	<hr/>	
	\$1,161,423,655.00	\$1,198,198,192.00	86
Mean of the above reserves		\$1,179,810,923.50	
3 3/4% of mean of the reserve funds allowable		\$ 44,242,909.64	
3 3/4% of mean of the reserve fund taken on return		47,690,472.76	
	<hr/>	<hr/>	
3 3/4% of mean of the reserve fund overstated		\$ 3,447,563.12	

In accordance with section 203(a)(2) of the Revenue Act of 1932, you are permitted as a deduction 3 3/4% of the mean of the reserve funds required by law; therefore, the reserves contemplated by law have been redetermined as shown above. 87

In this connection your attention is invited to the decision rendered by the United States Court of Claims in the case of the Continental Assurance Company and the decision of the United States Supreme Court in the case of Inter-Mountain Life Insurance Company and to article 971 of Regulations 77 as amended by Treasury Decision 4615 published in Internal Revenue Bulletin December 30, 1935, volume XIV, #52, page 17.

[31] (d) Since discounts on premiums do not come within the classification of interest paid as defined in section

Exhibit "A."

203(8) of the Revenue Act of 1932, in accordance with the decision of the United States Board of Tax Appeals in the case of Illinois Life Insurance Company, Docket No. 67201, promulgated June 12, 1934, they are disallowed as a deduction from gross income.

89 (e) Cost of improvements to foreclosed properties included in deduction item 11 of return captioned "Other Real Estate Expenses" now disallowed as a deduction from gross income representing expenses of placing properties acquired through foreclosure proceedings in a rentable condition as shown below:

Initial renovation expenses	
General work \$264,071.91
Shades 4,158.62
Interior decorating 68,508.36
Capital expenditures restored to income	<u>\$336,738.89</u>

90 (f) Interest paid under supplementary contracts allowed as a deduction from gross income in accordance with the decision of the United States Board of Tax Appeals in the case of The Penn Mutual Life Insurance Company, Docket No. 52577, promulgated June 28, 1935.

(g) Depreciation—Improvements—Foreclosed Properties

Year	Cost	Rate	Allowable Depreciation
1933	\$336,738.89	1 1/2% Averaged	\$5,051.08

Allowing depreciation at an annual rate of 3% on capital expenditures restored to taxable income.

The above adjustments (a), (b), part of (c), (d), (e), (f), and (g) were agreed to by you by agreement forms

Exhibit "A."

870 dated January 31, 1936, March 13, 1936, and February 19, 1937.

[32]

SCHEDULE 2

Computation of Tax
Income Tax

Net income for taxable year	\$3,157,461.74
-----------------------------------	----------------

Income tax at 13 $\frac{3}{4}$ percent	434,150.99
--	------------

Less:

Taxes paid to a foreign country (1)	6,134.94
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Total income tax assessable	\$ 428,016.05
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Total previously assessed:

February 1936, list-page 2,

line 2, #3	\$58,642.16
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Collector's #520352/36	56,733.90
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Additional, February 1937,

page 0, line 8, #4	44,962.60
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160,338.66

Deficiency in tax	\$ 267,677.39
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(1) Proportion of foreign mean reserve
to total mean reserve

1.41309%

\$434,150.99 x 1.41309% equals	\$ 6,134.94
--------------------------------------	-------------

94 [33]

UNITED STATES BOARD OF TAX APPEALS

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No.
89294.

95

Answer.

The Commissioner of Internal Revenue by his attorney, Morrison Shafrroth, Chief Counsel, Bureau of Internal Revenue, for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1. Denies all the material allegations contained in paragraph 1 of the petition, except the allegation that the petitioner is a corporation organized and existing under the laws of the State of New York, which allegation is admitted.
2. Admits all the material allegations contained in paragraph 2 of the petition.
3. Denies all the material allegations contained in paragraph 3 of the petition, except the allegation that the taxes in controversy are income taxes for the calendar year 1933, which allegation is admitted.
- 4-(1). Denies that the respondent committed error in the determination of the deficiency as alleged in paragraph 4 of the petition.

4-(2). Denies that any error was made in the determination of the deficiency referred to in deficiency letter dated March 6, 1937.

[34] 5. Denies all the material allegations contained in paragraph 5 of the petition, except the allegation that "The taxpayer is a corporation duly organized and existing under and by virtue of the laws of the State of New York", which allegation is admitted.

6. Denies generally and specifically each and every allegation in the petitioner's petition contained not hereinbefore admitted; qualified or denied.

WHEREFORE, it is prayed that the petitioner's appeal be denied.

(Signed) MORRISON SHAFROTH.

MORRISON SHAFROTH,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

J. ARTHUR ADAMS,
FRANK A. SURINE,
Special Attorneys,
Bureau of Internal Revenue.

100 [35]

UNITED STATES BOARD OF TAX APPEALS

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,*Petitioner,*

vs.

Docket No.
89294.COMMISSIONER OF INTERNAL REVENUE,
Respondent.

101

Amended Answer to Petition.

The respondent, by his attorney, J. P. Wenchel, Chief Counsel for the Bureau of Internal Revenue, for an amended answer to the petition filed in this proceeding, admits, denies and avers as follows:

1. Denies all the material allegations contained in paragraph 1 of the petition, except the allegation that the petitioner is a corporation organized and existing under the laws of the State of New York, which allegation is admitted.
2. Admits all the material allegations contained in paragraph 2 of the petition.
3. Denies all the material allegations contained in paragraph 3 of the petition, except the allegation that the taxes in controversy are income taxes for the calendar year 1933, which allegation is admitted.
- 4(a). Denies the Commissioner erred as alleged in subparagraphs a to n, inclusive, of paragraph 4 of the petition.
- 4(b). Avers the respondent erred in allowing the petitioner to deduct $3\frac{3}{4}$ per cent of the mean of the reserve

102

Amended Answer to Petition.

103

funds held by the [36] petitioner during the taxable year to provide payment for disability benefits expected to become due in the future with respect to future disabilities and to provide for additional accidental death benefits.

5. Denies all the material allegations contained in paragraph 5 of the petition, except the allegation that "The taxpayer is a corporation duly organized and existing under and by virtue of the laws of the State of New York," which allegation is admitted.

6(a). The facts relied upon by the respondent in support of the allegations of error as set forth in paragraph 4(b) are as follows:

At the beginning of the taxable year 1933, petitioner held, among its reserves, a reserve in the amount of \$19,345,376. At the end of the year this reserve had been increased to \$21,887,167. The purpose of this reserve was to provide for benefits expected to become due in the future in respect to future disabilities occurring as to those life insurance policies issued by the petitioner containing disability provisions. This reserve is not a life insurance reserve and it is wholly separate and distinct from the reserves accumulated with respect to petitioner's life insurance risk. In determining the deficiency herein the respondent allowed the petitioner a deduction in the amount of 3 $\frac{3}{4}$ per cent of the mean of this reserve for the taxable year 1933.

104

105

6(b). At the beginning of the taxable year 1933, petitioner also held among its reserves a reserve for accidental death benefits expected to become due in the future in the amount of \$7,319,147 and \$7,729,853 at the end thereof. This reserve was accumulated to provide for accidental death benefits to which certain of the petitioner's policyholders [37] might become entitled under the terms of their

106

Amended Answer to Petition.

policies. This reserve is not a life insurance reserve and it is wholly separate and distinct from the reserves accumulated with respect to the petitioner's life insurance policies. In determining the deficiency herein the respondent allowed the petitioner to deduct 3 $\frac{3}{4}$ per cent of the mean of this reserve.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

107

WHEREFORE, it is prayed that the petitioner's appeal be denied and that the deficiency be increased in accordance with the affirmative allegations of this amended answer and claim is hereby asserted for such increased deficiency.

J. P. WENCHEL,
ECA.

Chief Counsel,
J. P. WENCHEL,
Bureau of Internal Revenue.

OF COUNSEL:

108 E. O. HANSON,
Division Counsel.

THOS. H. LEWIS, JR.,
LEONARD A. SPALDING, JR.,
Special Attorneys,
Bureau of Internal Revenue.

LAS/lmv 4/10/39

[38]

UNITED STATES BOARD OF TAX APPEALS

109

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

vs.

Petitioner,

COMMISSIONER OF INTERNAL REVENUE,

*Respondent.*Docket No.
89294.

110

Amendment of Petition.

The petitioner, The Equitable Life Assurance Society of the United States, with leave of the Board and with the consent of the respondent, amends its petition in the above entitled proceeding, by striking therefrom the following paragraphs:

4(f) and 5(j), both relating to gross premiums paid in advance;

4(j) and 5(q), both relating to premiums paid on bonds;

4(l) and 5(s), all relating to defaulted interest on foreclosed

111

5(t)

5(u) mortgages;

4(m) and 5(v), both relating to fire insurance premiums;

and by changing paragraph 4(d), 5(h), 5(k) and 5(l) to read respectively, as follows:

4(d). The Commissioner erred in failing to allow a deduction in the amount of \$2,165,217.50 being 3¾% of the mean [39] of the funds held by the

112

Amendment of Petition.

taxpayer at the beginning and end of the taxable year as its reserves for total and permanent disability benefits which would probably become due in the future pursuant to the total and permanent disability provisions of its life policies, from disabilities which had already commenced; the maintenance of these reserves being required by the laws of the states in which the taxpayer was then doing business, and the funds so held being "reserve funds required by law," within the meaning of section 203 (a)(2) of the Revenue Act of 1932.

113

5(h). For the fulfillment of its obligations under certain provisions in its policies known as "total and permanent disability provisions," the taxpayer maintained throughout the taxable year 1933 and prior thereto funds accumulated at interest from premiums, for a reserve fund held to provide for contingent benefits expected to become due in the future in respect of disabilities which had already commenced, (generally known as "Reserve for Total and Permanent Disability Benefits, Disable Lives").

114

5(k). The amounts of these reserve funds held by the taxpayer at the beginning and end of the taxable year [40] 1933 were as follows:

<i>Reserve Fund</i>	<i>Beginning of Year</i>	<i>End of Year</i>
Reserve for Total and Permanent Disability Benefits, Disabled Lives	\$54,526,322.01	\$60,951,944.91
Present value of amounts not yet due on Supplementary Contracts not involving life contingencies	34,806,201.00	42,326,682.00

Amendment of Petition.

115

5(1). Each of these reserve funds, described in paragraphs 5(h), 5(i), and 5(k) of this petition, as maintained with annual interest increments, was necessary to meet the obligations for which it was held, and was required by the statutes of the states in which the taxpayer was doing business and by the rulings of state officials made pursuant to authority conferred by these statutes. All of these funds are "reserve funds required by law" within the meaning of section 203 (a)(2) of the Revenue Act of 1932. The Commissioner in computing the tax which the taxpayer here petitions to have redetermined, failed to allow any deduction in respect of these reserve funds other than the deduction noted in 5(n) hereof of \$1,118,594.00 which was allowed as a deduction for guaranteed interest paid on the taxpayer's Supplementary Contracts not involving life contingencies.

116

(Signed) CAMPBELL E. LOCKE.

CAMPBELL E. LOCKE,
Attorney for Petitioner,

120 Broadway,
New York, N. Y.

117

118

Amendment of Petition.

[41]

State of New York,
 City of New York, } ss.:
 County of New York,

119 ANDREW E. TUCK, being duly sworn, says that he is a Vice-President of The Equitable Life Assurance Society of the United States, the petitioner above named, and as such is duly authorized to verify the foregoing amendment of the petition herein; that he has read the foregoing amendment of the petition and is familiar with the statements contained therein, and that the facts stated are true to the best of his knowledge, information and belief.

(Signed) ANDREW E. TUCK.

ANDREW E. TUCK.

Subscribed and sworn to before me
 on this 15th day of May, 1939.

(Signed) HENRY M. ENSOR,

HENRY M. ENSOR.

Notary Public, Bronx County No. 33, Reg. No. 20-E-41.
 Cert. filed in N. Y. Co. No. 83, Reg. No. 1-E-68.
 Commission Expires March 30, 1941.

120

(Seal)

[42]

UNITED STATES BOARD OF TAX APPEALS

121

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,*Petitioner,*

vs.

Docket No.

89294

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

122

**Second Amended Answer to Petition and
Answer to Amendment of Petition.**

The respondent, by his attorney, J. P. Wenchel, Chief Counsel for the Bureau of Internal Revenue, for a second amended answer to petition and answer to amendment of petition filed in this proceeding, admits, denies and avers as follows:

1. Admits the petitioner is a corporation organized and existing under the laws of the State of New York with its principal offices at 393 Seventh Avenue, in the Borough of Manhattan, City, County and State of New York. Denies the remaining allegations contained in paragraph 1 of the petition as amended.
2. Admits all the material allegations contained in paragraph 2 of the petition as amended.
3. Admits that the taxes in controversy are income taxes for the calendar year 1933 but denies the remaining allegations contained in paragraph 3 of the petition as amended.

123

*Second Amended Answer to Pétition and
Answer to Amendment of Petition.*

4(a). Denies that the Commissioner erred as alleged in subparagraphs (a), (b), (c), (d), (e), (g), (h), (i), (k), and (n) of paragraph 4 of the petition as amended.

[43] 4(b) Avers that the respondent erred in allowing the petitioner to deduct $3\frac{3}{4}$ per cent of the mean of certain liabilities carried on the books of the petitioner during the taxable year 1933 and entitled "Extra Reserve for Total and Permanent Disability Benefits and for Additional Accidental Death Benefits Included in Life Policies."

125

4(c). Avers that the respondent erred in allowing petitioner to deduct \$1,118,594 as guaranteed interest paid with respect to its "Supplementary Contracts not Involving Life Contingencies."

5. Denies all material allegations contained in paragraph 5 of the petition as amended except the allegation that the "taxpayer is a corporation duly organized and existing under and by virtue of the laws of the State of New York" which allegation is admitted.

126

6(a). The facts relied upon by the respondent in support of the allegations of error as set forth in paragraph 4(b) are as follows:

At the beginning of the taxable year 1933 the petitioner carried on its books as a liability an item in the amount of \$19,345,376. At the end of the year the petitioner carried on its books as a liability an item in the amount of \$21,887,167. The purpose of these items was to provide for the petitioner's estimated liabilities with respect to disability benefits which were expected to become payable in the future under certain disability provisions contained in certain of the life insurance policies issued by petitioner. The liability was not a life insurance reserve, was in no way connected with the reserves accumulated [44] with

*Second Amended Answer to Petition and
Answer to Amendment of Petition.*

127

respect to petitioner's life insurance risks, and was not a reserve fund required by law within the meaning and intent of section 203 (a)(2) of the Revenue Act of 1932. In determining the deficiency herein the respondent allowed the petitioner a deduction in the amount of $3\frac{3}{4}$ per cent of the mean of this liability.

6(b). At the beginning of the year 1933 the petitioner carried on its books as a liability an item in the amount of \$7,319,147. At the end of the year the petitioner carried on its books as a liability an item in the amount of \$7,729,853. The purpose of these items was to provide for the petitioner's estimated liabilities with respect to accidental death benefits which were expected to become payable in the future under certain accidental death provisions contained in certain of the life insurance policies issued by petitioner. The liability was not a life insurance reserve, was in no way connected with the reserves accumulated with respect to petitioner's life insurance policies, and was not a reserve fund required by law within the meaning and intent of section 203(a)(2) of the Revenue Act of 1932. In determining the deficiency herein, the respondent allowed the petitioner to deduct $3\frac{3}{4}$ per cent of the mean of this liability at the beginning and end of the taxable year 1933.

128

6(c). The facts relied upon by the respondent in support of the allegation of error set forth in paragraph 4(c) are as follows:

During and prior to the year 1933 petitioner sold various types of life insurance policies which included provisions permitting the insured to elect with respect to the method of settlement upon the maturity of the policy. In the absence of an election [45-46] by the insured prior to the maturity of the policy, the beneficiary was granted the same privilege. Attached hereto and marked Exhibit A,

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130

*Second Amended Answer to Petition and
Answer to Amendment of Petition.*

and made a part hereof, is a copy of the various optional modes of settlement provided for in petitioner's policies of life insurance. The sum of \$1,118,594 claimed by the petitioner as a deduction on its return as "guaranteed interest" was accrued and paid by the petitioner with respect to contracts arising out of the exercise of options 1, 2, or 4. The respondent in determining the deficiency herein permitted the petitioner to deduct \$1,118,594 as interest accrued and paid. Of the amount thus allowed as a deduction \$538,984 was accrued and paid with respect to contracts each of which arose out of the exercise by the insured of options 1, 2, or 4 prior to the maturity of the policy and \$579,610 was accrued and paid with respect to contracts which arose out of the exercise by the beneficiary of options 1, 2, or 4 after the maturity of the policy.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

WHEREFORE, it is prayed that the petitioner's appeal be denied and that the deficiency be increased in accordance with the affirmative allegations of the second amended answer to petition and answer to amendment of petition and claim is hereby asserted for such increased deficiency.

J. P. WENCHEL,

Chief Counsel,
Bureau of Internal Revenue.

OF COUNSEL:

E. O. HANSON,

Division Counsel.

THOS. H. LEWIS, JR.,

LEONARD A. SPALDING, JR.,

Special Attorneys,

Bureau of Internal Revenue.

(For Ex. A—See Ex. D to Stip., Page 117.)

[47]

UNITED STATES BOARD OF TAX APPEALS

133

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

against Petitioner,
Petitioner,

Docket No.
89294.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Reply to Amended Answer (Filed April 17, 1939)
and to Second Amended Answer (Filed Herewith).

134

The above named petitioner for reply to the allegations, affirmatively set out by the respondent in his amended answer filed April 17, 1939, and in his second amended answer filed herewith, avers, admits and denies as follows:

4(b). Denies that the respondent erred as alleged in paragraph 4(b) of the answer as now amended.

4(c). Denies that the respondent erred as alleged in paragraph 4(c) of the answer as now amended unless it was also error on the part of the respondent to disallow the reserve deduction for supplementary contracts as alleged in paragraph 4(e) of the petition herein. The petitioner does not contend that it is entitled to both deductions in respect of its Supplementary Contracts Not Involving Life Contingencies (i.e. a reserve deduction and also a deduction for interest paid on such contracts).

135

6(a) Admits all the allegations in paragraph 6(a) of the answer as now amended except the allegations contained in the sentence:

136

*Reply to Amended Answer (Filed April 17, 1939)
and to Second Amended Answer (Filed Herewith).*

“This liability was not a life insurance reserve, was in no way connected with the reserves accumulated with respect to the petitioner’s life insurance risks, and [48] was not a reserve fund required by law within the meaning and intent of section 203 (a)(2) of the Revenue Act of 1932.”

which allegations are denied.

137

6(b). Admits all the allegations in paragraph 6(b) of the answer as now amended except the allegations contained in the sentence:

“The liability was not a life insurance reserve, was in no way connected with the reserves accumulated with respect to petitioner’s life insurance policies, and was not a reserve fund required by law within the meaning and intent of section 203 (a)(2) of the Revenue Act of 1932.”

which allegations are denied.

138

C(c) Admits the allegations contained in the sentence reading:

“During and prior to the year 1933 petitioner sold various types of life insurance policies which included provisions permitting the insured to elect with respect to the method of settlement upon maturity of the policy.”

and avers that the same provisions (contained in these policies as originally issued) provided that the beneficiary would have the right to make the same elections if the insured should die before exercising this right.

Reply to Amended Answer (Filed April 17, 1939)
and to Second Amended Answer (Filed Herewith).

139

Denies all allegations contained in the sentence reading:

"In the absence of an election by the insured prior to the maturity of the policy, the beneficiary was granted the same privilege."

except in so far as such allegations are in accord with the averment just made, to which extent they are admitted.

Admits that the various optional modes of settlement provided for in petitioner's policies of life insurance are as shown in Exhibit A of second amended answer.

140

Admits that the petitioner paid \$1,118,594.00 of "guaranteed interest" which accrued on its Supplementary Contracts Not Involving Life Contingencies [49] which arose out of the exercise of options 1, 2 and 4; and that the respondent in determining the deficiency herein, allowed a deduction in that amount for interest accrued and paid on these supplementary contracts; but denies that the petitioner claimed any such deduction on its return.

Avers that in respect of its Supplementary Contracts Not Involving Life Contingencies, petitioner on its return claimed only the reserve deduction therefor provided by section 203 (a)(2) of the Revenue Act of 1932; that prior to the commencement of this proceeding the petitioner never claimed a deduction for interest paid on such Supplementary Contracts; and that in these proceedings the three deductions for interest paid on these Supplementary Contracts (i.e. the deduction allowed by the respondent for guaranteed interest which accrued during the year; together with the deduction claimed in paragraph 4(g) of the petition for excess interest, and that claimed in paragraph 4(h) of the petition for guaranteed interest which accrued in prior years) are claimed only in the event that

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142 *Reply to Amended Answer (Filed April 17, 1939)
and to Second Amended Answer (Filed Herewith).*

it should be held that the petitioner is not entitled to the reserve deduction provided for these supplementary contracts by section 203 (a)(2) of the Revenue Act of 1932, and claimed by the petitioner on its returns and in paragraph 4(e) of the petitions herein.

Admits the allegations in the last sentence of paragraph 6(e) of the answer as now amended as to the amount of guaranteed interest which, during the year, accrued and was paid with respect to Supplementary Contracts arising out of options exercised by the insured, and with respect to such contracts arising out of options exercised by the beneficiaries.

143 Denies generally and specifically each and every allegation contained [50] in the amended answer or in the second amended answer, not hereinbefore admitted, qualified, or denied.

WHEREFORE, the petitioner prays that this Board may hear this proceeding and

144 1. redetermine the deficiency asserted by the respondent for the taxable year 1933;

2. redetermine the petitioner's income taxes for that year free from the errors assigned in the petition and in the amendment thereof;

3. determine the amount of over-payments of tax made by the petitioner in respect of the taxable year 1933, and that such over-payments were made within two years before the filing of the petition herein;

4. deny the claims set up by the respondent in his answer as now amended; and

Reply to Amended Answer (Filed April 17, 1939)
and to Second Amended Answer (Filed Herewith).

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5. grant to the petitioner such other and further relief as may appear to this Board to be just and proper in the premises.

(Signed) **CAMPBELL E. LOCKE.**

CAMPBELL E. LOCKE,
 Attorney for Petitioner,

120 Broadway,
 New York, N. Y.

Of Counsel:

DONALD M. DUNN, and
JOHN L. GRANT.

146

State of New York,
 City of New York, } ss.:
 County of New York, }

ANDREW E. TUCK, being duly sworn, says that he is a Vice-President of The Equitable Life Assurance Society of the United States, the petitioner above named, and as such is duly authorized to verify the foregoing reply; that he has read the foregoing reply and is familiar with the statements contained therein, and that the facts stated are true to the best of his knowledge, information and belief.

147

(Signed) **ANDREW E. TUCK.**
ANDREW E. TUCK.

Subscribed and sworn to before me
 on this 24th day of May, 1939.

(Signed) **HENRY M. ENSOR.**

HENRY M. ENSOR.

Notary Public, Bronx County No. 33, Reg. No. 20-E-41.
 Cert. filed in N. Y. Co. No. 83, Reg. No. 1-E-68.
 Commission expires March 30, 1941.
 (Seal)

148 [51]

UNITED STATES BOARD OF TAX APPEALS

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner,
against

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No.
89294
Docket No.
93805

149

**Motion for Leave to File Amendments of
Petitions as Heretofore Amended.**

Now comes The Equitable Life Assurance Society of the United States, by its attorney Campbell E. Locke, and respectfully asks leave of the Board to file the attached amendments of its petitions, as heretofore amended, in the above entitled proceedings, as of the date of the hearing therein on the 26th day of May, 1939.

(Sgd.) CAMPBELL E. LOCKE.

CAMPBELL E. LOCKE,
Attorney for Petitioner,
120 Broadway,
New York, N. Y.

150

Of Counsel:

DONALD M. DUNN, and
JOHN L. GRANT.

Granted
Aug 21 1939

Member
U. S. Board of Tax Appeals

[52]

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UNITED STATES BOARD OF TAX APPEALS.

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.

89294

Docket No.

93805

152

Amendments of Petitions as Heretofore Amended.

The petitioner, The Equitable Life Assurance Society of the United States, with leave of the Board amends its petitions as heretofore amended in the above entitled proceedings, as of the date of the hearing therein on the 26th day of May, 1939, by adding to each of said petitions as heretofore amended the following paragraphs:

5(z)(1): The petitioner, within the times required by law, duly filed its returns of net income for the calendar years 1924, 1925, 1926 and 1928 under the provisions of the Revenue Acts of 1924, 1926 and 1928 respectively. Thereafter the Commissioner of Internal Revenue served upon the petitioner by registered mail notices of deficiency in taxes with respect to the taxable years 1924 and 1925 on or about the 11th day of July, 1927; with respect to the taxable year 1926 on or about the 29th day of October, 1927, and with respect to the taxable year 1928 on or about the 5th day of March, 1931. Thereafter and within the times prescribed by law, the petitioner filed with the United States Board of Tax Appeals petitions for a redetermination of [53] deficiencies set forth in said notices of deficiencies. Upon the petitions so filed, as subsequently

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154 *Amendments of Petitions as Heretofore Amended.*

amended, and the answers of the Commissioner filed thereto, as subsequently amended, among other issues were the questions whether the petitioner was entitled to deductions with respect to certain reserves or a portion thereof maintained by the petitioner pursuant to State laws for the taxable years involved in respect to its cancelable and non-cancelable accident and health policies, under the provisions of the Revenue Acts of 1924, 1926 and 1928, in ascertaining the net income of the petitioner subject to taxation for the taxable years involved under the provisions of those Acts respectively. These issues and the other issues involved in said proceedings duly came on for trial at a hearing before a member of the United States Board of Tax Appeals held in the Borough of Manhattan of the City of New York on the 7th day of February, 1935, and subsequently said Board on or about the 12th day of December, 1935, promulgated its opinion (33 B. T. A. 708) wherein, among other things, it decided that the reserve maintained by the petitioner pursuant to State laws in respect to its non-cancelable accident and health policies and a portion of the reserve maintained by the petitioner in respect to its cancelable and non-cancelable accident and health policies for the taxable years involved

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were reserves required by law within the meaning of Section 245(a)(2) of the Revenue Acts of 1924 and 1926 and Section 203(a)(2) of the Revenue Act of 1928, and that the petitioner was entitled to deductions with respect to the same accordingly. Thereafter and on or about the 5th day of March, 1936, said Board, pursuant to its said opinion, made and entered its decision determining the tax liability of the petitioner for the taxable years of 1924, [54] 1925, 1926 and 1928 in accordance with said opinion. No appeal was taken from said decisions and the same therefore became final before the present proceedings were instituted. Two of the issues involved in the present pro-

ceedings relate to deductions from gross income in ascertaining taxable net income under the provisions of Section 203(a)(2) of the Revenue Acts of 1932 and 1934 for the years involved, with respect to a reserve entitled "Additional Reserve on Non-Cancelable Accident and Health Policies" and a reserve entitled "Unpaid and Unresisted Claims," which are the same reserves, computed in the same manner and held for the same purpose and in respect of the same or similar policies, as the reserves or portions thereof by those names involved in said prior proceedings of the petitioner against the Commissioner of Internal Revenue and with respect to which the Board decided, as aforesaid, that the petitioner was entitled to deductions. The provisions of Section 245(a)(2) of the Revenue Acts of 1924 and 1926 and of Section 203(a)(2) of the Revenue Acts of 1928, 1932 and 1934 are, for the purposes of the issues involved in these proceedings and of said prior proceedings, substantially the same. The questions upon such issues presented upon the facts and the law in these proceedings, although relating to different taxable years, are essentially the same as were involved in said prior proceedings and the decisions in said prior proceedings are *res adjudicata* of such questions and issues.

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5(z)(2): Involved in the present proceedings are issues relating to deductions with respect to reserves entitled "Unearned Accident and Health Premiums"; "Total and Permanent Disability Benefits, Active Lives" (sometimes called "Extra Reserve for Total [55] and Permanent Disability Benefits"); "Total and Permanent Disability Benefits, Disabled Lives" (sometimes called "Present Value of Amounts Incurred but not yet Due for Total and Permanent Disability Benefits"); and "Extra Reserve for Additional Accidental Death Benefits." While these reserves were not involved in said prior proceedings of the petitioner against the Commissioner of Internal

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160 *Amendments of Petitions as Heretofore Amended.*

Revenue, and concern different taxable years, the questions relating thereto are to be determined by facts and law which are essentially the same as the facts and law involved in the determination of the issues in said prior proceedings, and said reserves are in all essentials like those involved in said prior proceedings and the decisions of the Board in said prior proceedings are *res adjudicata* of the issues involved in these proceedings relating to such reserves.

161 (Sgd.) CAMPBELL E. LOCKE,
CAMPBELL E. LOCKE,
Attorney for Petitioner,

120 Broadway,
New York, N. Y.

Of Counsel:

DONALD M. DUNN, and
JOHN L. GRANT.

Amendments of Petitions as Heretofore Amended.

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[55-A]

State of New York, }
 City of New York, }
 County of New York, } ss.:

ANDREW E. TUCK, being duly sworn; says that he is a Vice President of The Equitable Life Assurance Society of the United States; the petitioner above named, and as such is duly authorized to verify the foregoing amendments of the petitions in these proceedings as heretofore amended; that he has read the foregoing amendment of the petitions and is familiar with the statements contained therein, and that the facts stated are true to the best of his knowledge, information and belief.

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ANDREW E. TUCK.

Subscribed and sworn to before me
 this 28th day of July, 1939.

HENRY M. ENSOR,
 Notary Public.

Bronx County No. 33, Reg. No. 20-E-41.
 Cert. filed in N. Y. Co. No. 83, Reg. No. 1-E-68.
 Commission expires March 30, 1941.

(Seal)

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166 [56]

UNITED STATES BOARD OF TAX APPEALS

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.
89294
Docket No.
93805

167

Motion for Leave to File Amendments of Replies.

Now comes The Equitable Life Assurance Society of the United States, by its attorney Campbell E. Locke, and respectfully asks leave of the Board to file the attached amendments of its replies in the above entitled proceedings, as of the date of the hearing therein on the 26th day of May, 1939.

(Signed) CAMPBELL E. LOCKE.

CAMPBELL E. LOCKE,
Attorney for Petitioner,

120 Broadway,
New York, N. Y.

168

OF COUNSEL:

DONALD M. DUNN, and
JOHN L. GRANT.

Granted
Aug 21 1939

Member
U. S. Board of Tax Appeals

[57]

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UNITED STATES BOARD OF TAX APPEALS

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner,

vs.

Docket No.
89294COMMISSIONER OF INTERNAL REVENUE,
Respondent.170
Amendment of Reply to Amended Answer
and to Second Amended Answer.

The petitioner, The Equitable Life Assurance Society of the United States, with leave of the Board, amends its reply to amended answer and to second amended answer in the above entitled proceeding, as of the date of the hearing therein on the 26th day of May, 1939, by changing paragraph 4(b) of that reply to read as follows:

4(b)(1): Denies that the respondent erred as alleged in paragraph 4(b) of the answer as now amended.

4(b)(2): The petitioner, within the times required by law, duly filed its returns of net income for the calendar years 1924, 1925, 1926 and 1928 under the provisions of the Revenue Acts of 1924, 1926 and 1928 respectively. Thereafter the Commissioner of Internal Revenue served upon the petitioner by registered mail notice of deficiency in taxes with respect to the taxable years 1924 and 1925 on or about the 11th day of July, 1927; with respect to the taxable year 1926 on or about the 29th day of October, 1927, and with respect to the taxable year 1928 on or about the 5th day of March, 1931. Thereafter and within the times prescribed by law, the petitioner filed with the United States Board of Tax Appeals petitions for a redetermination [58] of deficiencies set forth in said notices of deficiency.

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*Amendment of Reply to Amended Answer
and to Second Amended Answer.*

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cies. Upon the petitions so filed, as subsequently amended, and the answers of the Commissioner filed thereto, as subsequently amended, among other issues were the questions whether the petitioner was entitled to deductions with respect to certain reserves or a portion thereof maintained by the petitioner pursuant to State laws for the taxable years involved in respect to its cancelable and non-cancelable accident and health policies, under the provisions of the Revenue Acts of 1924, 1926 and 1928, in ascertaining the net income of the petitioner subject to taxation for the taxable years involved under the provisions of those Acts respectively. These issues and the other issues involved in said proceedings duly came on for trial at a hearing before a member of the United States Board of Tax Appeals held in the Borough of Manhattan of the City of New York on the 7th day of February, 1935, and subsequently said Board on or about the 12th day of December, 1935, promulgated its opinion (33 B. T. A. 708) wherein, among other things, it decided that the reserve maintained by the petitioner pursuant to State laws in respect to its non-cancelable accident and health policies and a portion of the reserve maintained by the petitioner in respect to its cancelable and non-cancelable accident and health policies for the taxable years involved were reserves required by law within the meaning of Section 245(a)(2) of the Revenue Acts of 1924 and 1926 and Section 203(a)(2) of the Revenue Act of 1928, and that the petitioner was entitled to deductions with respect to the same accordingly. Thereafter and on or about the 5th day of March, 1936, said Board, pursuant to its said opinion, made and entered its decision determining the tax liability of the petitioner for the taxable years 1924, 1925, 1926 and 1928 in accordance with said [59] opinion. No appeal was taken from said decisions and the same therefore became final before the present proceedings were instituted. The provisions of Section 245(a)(2) of the Revenue Acts of 1924 and 1926

*Amendment of Reply to Amended Answer
and to Second Amended Answer.*

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and of Section 203(a)(2) of the Revenue Acts of 1928, and 1932, for the purposes of the issues involved in said prior proceedings and the issue raised in the present proceedings by paragraph 4(b) of respondent's answer as now amended, are substantially the same.

4(b)(3): The issue raised in the present proceedings by paragraph 4(b) of the respondent's answer relates to a deduction from gross income in ascertaining taxable net income under the provisions of section 203(a)(2) of the Revenue Act of 1932 for the taxable year 1933 with respect to petitioner's reserve entitled "Extra Reserve for Additional Accidental Death Benefits" and with respect to petitioner's reserve entitled "Total and Permanent Disability Benefits, Active Lives" (Sometimes called "Extra Reserve for Total and Permanent Disability Benefits"). While these reserves were not involved in said prior proceedings of the petitioner against the Commissioner of Internal Revenue, and concern different taxable years, the questions relating thereto are to be determined by facts and law which are essentially the same as the facts and law involved in the determination of the issues in said prior proceedings, and said reserves are in all essential like those involved in said prior proceedings and the decisions of the Board in said prior proceedings are *res adjudicata* of the issues involved in these proceedings relating to such reserves.

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(Signed) CAMPBELL E. LOCKE.

CAMPBELL E. LOCKE,
Attorney for Petitioner,

120 Broadway,
New York, N. Y.

OF COUNSEL:

DONALD M. DUNN, and
JOHN L. GRANT.

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*Amendment of Reply to Amended Answer
and to Second Amended Answer.*

[60]

State of New York, }
City of New York, }ss.:
County of New York,

179

ANDREW E. TUCK, being duly sworn, says that he is a Vice President of The Equitable Life Assurance Society of the United States, the petitioner above named, and as such is duly authorized to verify the foregoing amendment of the reply in this proceeding; that he has read the foregoing amendment of the reply and is familiar with the statements contained therein, and that the facts stated are true to the best of his knowledge, information and belief.

ANDREW E. TUCK.

Subscribed and sworn to before me
this 27th day of July, 1939.

HENRY M. ENSOR,
Notary Public.

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Bronx County No. 33, Reg. No. 20-E-41,
Cert. filed in N. Y. Co. No. 83, Reg. No. 1-E-68
Commission Expires March 30, 1941.

(Seal)

[61]

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UNITED STATES BOARD OF TAX APPEALS.

EQUITABLE LIFE ASSURANCE SOCIETY
OF THE UNITED STATES,

Petitioner,
vs.

Docket Nos.
89294 and
93805

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Motion.

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COMES now the respondent, by his attorney, J. P. Wenchel, Chief Counsel for the Bureau of Internal Revenue, and moves this Honorable Board for permission to file his answer to the amendments of petition as heretofore amended in each case and for reason therefor respondent shows the Board that petitioner has, with leave of the Board, amended its amended petitions by adding thereto certain allegations.

WHEREFORE, it is prayed that this motion be granted and upon the granting thereof the answers to the amendments of the petitions as heretofore amended stand as filed as supplements to the respondent's second amended answer to petition and answer to amendment of petition in each case.

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J. P. WENCHEL,
ECA.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

E. O. HANSON, Division Counsel, T. H. LEWIS, Special Attorney, Bureau of Internal Revenue.	Granted Aug 21 1939 Member U. S. Board of Tax Appeals.
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UNITED STATES BOARD OF TAX APPEALS.

EQUITABLE LIFE ASSURANCE SOCIETY
OF THE UNITED STATES,

vs.

Petitioner,

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No.
89294

185

**Answer to Amendments of Petition as Heretofore
Amended (Dated July, 1939).**

The respondent, by his attorney, J. P. Wenchel, Chief Counsel for the Bureau of Internal Revenue, as his answer to the amendments of the petitions as heretofore amended, admits and denies as follows:

5(z)(1): Admits the allegations of Paragraph 5(z)(1).

186 5(z)(2): Denies the allegations of Paragraph 5(z)(2).

J. P. WENCHEL,
ECA.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

E. O. HANSON, Division Counsel,
T. H. LEWIS, Special Attorney,
Bureau of Internal Revenue.

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UNITED STATES BOARD OF TAX APPEALS

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, PETITIONER *v.* COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

Docket Nos. 89294, 93805. Promulgated April 29, 1941.

1. During the years 1933 and 1934 the petitioner, a mutual life insurance company, maintained the following reserves: (a) additional reserve on noncancelable accident and health policies; (b) Unpaid and unresisted accident and health claims; (c) Unearned accident and health premiums; (d) Total and permanent disability benefits, active lives; (e) Total and permanent disability, disabled lives; (f) Extra reserve for additional accidental death benefits. *Held*, that the above reserves constitute "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Acts of 1932 and 1934.

2. Assets held against a liability "present value of amounts not yet due on supplementary contracts *not* involving life contingencies", *held*, not to be "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Acts of 1932 and 1934.

3. Under certain of its supplementary contracts in force during 1933 and 1934 the petitioner was required to make equal installment payments over the settlement period, which installment payments were computed so as to return to the beneficiary over the settlement period interest at a guaranteed rate of 3 percent per annum. Under some such contracts such method of settlement had been elected by the insured; under others, by the beneficiary after the insured's death. *Held*, that the interest included in the installment payments made under options 2 and 4, where the election was made by the insured, is not a legal deduction from gross income, but where such method of settlement was elected by the beneficiary the interest is a legal deduction. *Penn Mutual Life Insurance Co. v. Commissioner* (C. C. A., 3d Cir.), 92 Fed. (2d) 962, followed.

4. Upon all of its supplementary contracts not involving life contingencies the petitioner paid "interest dividends" in addition to its guaranteed rate of interest, the amount of such dividends

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Opinion.

being fixed by the petitioner. *Held*, that the amounts of such interest dividends are not legal deductions from gross income. *Penn Mutual Life Insurance Co. v. Commissioner, supra*, followed.

5. During the taxable years the petitioner was obligated to pay interest upon money left with it by policyholders, the deposit, together with interest, being applied on premiums falling due during [64] the taxable years. *Held*, that the petitioner is entitled to deduct from its gross income the interest thus paid.

6. Prior to the taxable years the petitioner erected an office building, space in which was rented. A part of the capital cost of the building (\$1,651,214.92), representing contractor's fees, architect's fees, etc., was not allocated to the various component elements of the building upon which depreciation was claimed in petitioner's return. *Held*, that the petitioner is entitled to allowances for depreciation at the rates stipulated by the parties in respect of the \$1,651,214.92 item.

Campbell E. Locke, Esq., John L. Grant, Esq., and Donald M. Dunn, Esq., for the petitioner.

Thomas H. Lewis, Jr., Esq., and L. A. Spalding, Jr., Esq., for the respondent.

OPINION.

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SMITH: These proceedings, consolidated for hearing, involve income tax deficiencies for 1933 and 1934 of \$267,677.39 and \$299,461.89, respectively. The respondent claims additional deficiencies for each of the taxable years.

The questions in issue are as follows:

(1) Is the petitioner entitled to a reserve deduction for its "additional reserve on non-cancellable accident and health policies"? (The respondent in his answer, as amended, asserts that the allowance of this deduction for 1934 was in error.)

(2) Is the petitioner entitled to a reserve deduction for a reserve called "unpaid and unresisted accident and health claims"?

(3) Is the petitioner entitled to a reserve deduction for its reserve for "unearned accident and health premiums"?

(4) Is the petitioner entitled to a reserve deduction for its reserve called "total and permanent disability benefits, active lives" (sometimes called "extra-reserve for total permanent disability benefits")? (The respondent in his answer, as amended, asserts that the allowance of this deduction for 1933 was in error.)

(5) Is the petitioner entitled to a reserve deduction for its reserve called "total and permanent disability benefits, disabled lives" (sometimes called "present-value of amounts incurred but not yet due for total and permanent disability benefits")?

(6) Is the petitioner entitled to a reserve deduction for its "extra" reserve for additional accidental death benefits"? (The respondent in his answer, as amended, asserts that the allowance of this deduction for 1933 was in error.)

(7) Is the petitioner entitled to a reserve deduction for its reserve for "supplementary contracts not involving life contingencies"?

[65] (8) Is the petitioner entitled to a deduction (as interest paid on indebtedness) for the "guaranteed" interest which, during the respective taxable years, accrued and was paid by petitioner on its supplementary contracts not involving life contingencies? (The respondent in his answer, as amended, asserts that the allowance of this deduction for 1933 and 1934 was in error. The petitioner claims this deduction only as an alternative to the reserve deduction involved in issue 7.)

(9) Is the petitioner entitled to a deduction (as interest paid on indebtedness) for "guaranteed" interest which it

accrued in prior years on its supplementary contracts not involving life contingencies and which was paid by the petitioner during the respective taxable years? (Petitioner appeals from the respondent's determination of deficiencies for 1933 and 1934, which were computed without allowing this deduction, but the petitioner claims this deduction only as an alternative to the reserve deduction involved in issue 7.)

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(10) Is the petitioner entitled to a deduction (as interest paid on indebtedness) for "excess interest dividends" which during the respective taxable years accrued and were paid by the petitioner on its supplementary contracts not involving life contingencies? (Petitioner appeals from the respondent's determination of deficiencies for 1933 and 1934, which were computed without allowing this deduction, but the petitioner claims this deduction only as an alternative to the reserve deduction involved in issue 7.)

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(11) Is the petitioner entitled to a deduction (as interest paid on indebtedness) for the amount of interest which during the respective taxable years it credited to funds which it held on demand and which (together with such funds) it applied to the payment of premiums becoming due on its policies, all in accordance with the agreements under which such funds were held?

(12) Is the petitioner entitled to a deduction for depreciation on the improvements on the farms which it owned during the respective taxable years? (The respondent concedes this issue and agrees that the depreciation shall be taken upon the stipulated costs of the improvements on the farms at the stipulated rates.)

(13) Is the petitioner entitled to a deduction for depreciation on its home office building in respect of the architect's fees, contractor's fees, and other general costs not allocated to the various component elements of the building?

These proceedings have been submitted to the Board upon a signed stipulation of facts, a supplementary stipulation of facts, and exhibits, all of which are made a part of our findings by reference.

[66] At all times material herein the petitioner was a mutual life insurance company; a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business in the Borough of Manhattan, City, County, and State of New York, and engaged in the business of issuing and selling life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), and accident and health insurance contracts.

From some time prior to the taxable year 1933 continuously to the present time the petitioner has been duly authorized in every state of the United States, except Texas, to transact the business of issuing life insurance and annuity contracts and has been transacting that business in each of such states, except Texas, pursuant to the laws thereof. During this entire time more than 50 percentum of the petitioner's total reserve funds have been held for the fulfillment of its life insurance and annuity contracts.

For convenience of treatment the findings of fact and opinion applicable to groups of issues raised will be set forth in order.

Issues 1-6

FACTS.—During 1933 and 1934 the petitioner had outstanding life insurance and annuity contracts (including

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contracts of combined life, health and accident insurance) and accident and health insurance policies. The six reserves covered by the first six issues in these proceedings were maintained and computed as required by the laws of the State of New York and by the rules and regulations of the insurance commissioner of that state, and also as required by the laws of other states in which the petitioner did business, and the rules and regulations of the insurance commissioners of such other states; and, as so required, the petitioner at all times held admitted assets sufficient to provide for these and for all other reserves and liabilities.

OPINION.—The above reserves have received the consideration of the Board in the following cases:

Equitable Life Assurance Society of the United States, 33 B. T. A. 708; *Monarch Life Insurance Co.*, 38 B. T. A. 716; *Pan-American Life Insurance Co.*, 38 B. T. A. 1439; *Oregon Mutual Life Insurance Co.* (Memorandum Opinion entered Jan. 4, 1939), Docket Nos. 85182 and 88299.

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In all the Board has held that the reserves were reserves required by law within the meaning of section 203 (a) (2) of the Revenue Acts of 1932 and 1934. Our decision in *Monarch Life Insurance Co.*, *supra*, was affirmed (C. C. A., 1st Cir.), 114 Fed. (2d) 314, in *Pan-American Life Insurance Co.*, *supra* (C. C. A., 5th Cir.), 111 Fed. (2d) 366, which was in turn affirmed by the Supreme Court, 311 U. S. [67] 272, and in *Oregon Mutual Life Insurance Co.*, *supra*, 112 Fed. (2d) 468; affd., 311 U. S. 267.

In support of his argument that these reserve funds are not "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Acts of 1932 and 1934, the respondent cites *New World Insurance Co. v. United States*, 26 Fed. Supp. 444. The Supreme Court affirmed the decision of the lower court in that case, with the following comment:

* * * the views expressed on the second question considered by the Court of Claims as to the right of deduction on account of insurance reserves not being an essential basis for the judgment and being contrary to *Helvering v. Oregon Mutual Life Insurance Co.* No. 564, decided this day.

Upon the authority of the above cited cases the contentions of the petitioner that these reserves are "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Acts of 1932 and 1934 are sustained.

Issues 7, 8, 9, 10.

FACTS.—The facts relating to these issues have been 206 stipulated as follows:

XXXI

During and prior to the calendar years 1933 and 1934, the taxpayer issued life insurance policies which gave to the insured and in some cases to the beneficiary the right to require the taxpayer to apply the net sum due under the policy upon its maturity, in accordance with one of the optional modes of settlement set up in Stipulation Exhibit D attached hereto and made a part hereof. Options exercised under provisions 1, 2, or 4 of Stipulation Exhibit D are generally known as "Supplementary Contracts not Involving Life Contingencies" and are so referred to in these proceedings. To provide for the payment of life policies which had matured and were payable during 1933 and subsequent years under these "Supplementary Contracts not Involving Life Contingencies" the petitioner carried on its books a liability (which the petitioner contends is a reserve liability) named "Present Value of Amounts not yet Due on Supplementary Contracts not Involving Life Contingencies", in the following respective amounts at the beginning and end of the calendar years 1933 and 1934:

	Year	Beginning of Year	End of Year
1933.....		\$34,806,201	\$42,326,682
1934.....		42,326,682	52,942,995

The mean of these amounts for 1933 is \$38,566,441.50 of which 48% was held in respect of supplementary contracts arising from options exercised by the insured during his or her lifetime, and 52% was held in respect of supplementary contracts arising from options exercised by the beneficiaries after the policies involved had matured.

[68] The mean of these amounts for 1934 is \$48,134,838.50 of which 47% was held in respect of supplementary contracts arising from options exercised by the insured during his or her lifetime, and 53% was held in respect of supple-

mentary contracts arising from options exercised by the beneficiaries after the policies involved had matured.

This liability carried on petitioner's books was an amount which, if maintained with annual interest increments, would exactly equal petitioner's obligations under the Supplementary Contracts Not Involving Life Contingencies. The obligations arising under these option contracts were absolute obligations of the petitioner and were not in any sense contingent upon the happening of future events. For the purpose of providing for these obligations, the taxpayer was required to accumulate and maintain this liability by the statutes of the states in which it was then doing business and by the rulings of state officials made pursuant to authority conferred upon them by such statutes, and as so required the petitioner at all times held admitted assets sufficient to provide for this and all other reserves and/or liabilities. In computing the taxes involved in these proceedings, the respondent determined that the liability called "Present Value of Amounts not yet Due on Supplementary Contracts now Involving Life Contingencies" and that portion of petitioner's admitted assets held to provide therefor, did not constitute a reserve fund within the meaning of the Revenue Acts of 1932 and 1934 and allowed no deduction in respect to it under Section 203 (a) (2) of said Revenue Acts, but did allow deductions under section 203 (a) (8) of those Acts for the "guaranteed interest" paid by the petitioner on these "Supplementary Contracts not Involving Life Contingencies", which accrued during the taxable year and was paid in that year. The deduction allowed by the respondent for such "guaranteed interest" accrued and paid during the year was \$1,118,594.00 for 1933 and \$1,315,000.00 for the year 1934.

The petitioner's liability under its Supplementary Contracts Not Involving Life Contingencies named "Present Value of Amounts Not Yet Due on Supplementary Contracts Not Involving Life Contingencies" carried on its books as stated in paragraph XXXI (of the Stipulation of Facts) was an amount which, if maintained with annual interest increments, would exactly equal petitioner's obligations under such contracts in respect of amounts not yet due at the time of valuation.

Of the mean of the "Present Value of Amounts Not Yet Due on Supplementary Contracts Not Involving Life Contingencies" held by the petitioner at the beginning and end of each of the taxable years, the following percentages were the present values of amounts not yet due under the different options set out in Stipulation Exhibit D exercised as indicated:

		1933	1934
Option 1 exercised by insured.		27.52%	26.20%
" 2 " "		15.36%	14.10%
" 4 " "		5.12%	4.70%
" 1 " "	beneficiary.	42.99%	44.52%
" 2 " "		6.76%	6.36%
" 4 " "		2.25%	2.12%
Total.		100.00%	100.00%

XXXII.

Of the \$1,118,594.00 allowed as a deduction for such "guaranteed interest" paid during the year 1933, \$538,984.00, was paid with respect to Supplementary [69] Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$579,610.00 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured. Of the \$1,315,000.00 allowed as a deduction for such "guaranteed interest" paid during the year 1934, \$624,097.00 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$690,903.00 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured. In these proceedings the respondent maintains that he erred in so far as he allowed deductions with respect to the "guaranteed interest." The term "guaranteed interest" is herein used in the same sense as it is used in the Supplementary Contracts set out in the Stipulation Exhibit D.

The "guaranteed interest" which was paid by the petitioner in the year it accrued on petitioner's Supplementary Contracts Not Involving Life Contingencies, accrued and was paid as follows under the different options set out in Stipulation Exhibit D, exercised as indicated:

	1933	1934
Option 1 exercised by insured.....	\$ 307,007	\$ 372,894
2 " " "	173,983	188,402
4 " " "	57,994	62,801
1 " " "beneficiary.....	480,191	583,244
2 " " "	74,564	80,744
4 " " "	24,855	26,915
Total.....	\$1,118,594	\$1,315,000

XXXIII

The petitioner paid "guaranteed interests" which had accrued in prior years on these supplementary contracts at the guaranteed rate of 3 per cent, in the amount of \$13,432.49 in 1933 and in the amount of \$14,237.50 in 1934. The respondent, in computing the taxes involved in these proceedings, allowed no deductions for these amounts of "guaranteed interest" which accrued in prior years but which were paid during the taxable years involved herein.

XXXIV

Of the \$13,432.49 disallowed as a deduction for such "guaranteed interest" paid during the year 1933, \$5,238.67 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$8,193.82 was paid

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with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured. Of the \$14,237.50 disallowed as a deduction for such "guaranteed interest" paid during the year 1934, \$5,552.63 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$8,684.87 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising Out of Options which were exercised by the beneficiaries after the policies involved had matured.

[70] The "guaranteed interest" which had accrued in prior years on petitioner's Supplementary Contract Not Involving Life Contingencies and which was paid by petitioner during the taxable years here involved, was all paid under option 1 the provisions of which are set forth in Stipulation Exhibit D.

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XXXV

In 1933 and 1934, at the beginning of each calendar year, the petitioner, by resolution of its Board of Directors declared an excess interest dividend over and above the guaranteed 3 per cent per annum with respect to the amounts held by it under the "Supplementary Contracts not Involving Life Contingencies." The term "excess interest dividend" is herein used in the same sense as it is used in the supplementary contracts as set out in Stipulation Exhibit D attached hereto and made a part hereof. Respondent determined that such excess interest dividends did not constitute interest within the meaning of section 203 (a) (8) of the Revenue Acts of 1932 and 1934.

XXXVI

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The petitioner paid excess interest dividends which accrued during the year on its "Supplementary Contracts not Involving Life Contingencies," at the rate declared for the year by its Board of Directors, in the amount of \$534,887.54 in 1933 and in the amount of \$545,463.93 in 1934. In computing the taxes involved in these proceedings the respondent allowed deductions under section 203 (a) (8) of the Revenue Acts of 1932 and 1934, in the amounts stated in paragraphs XXXI of this stipulation, for the "guaranteed interest" which accrued on these supplementary contracts during each of the years 1933 and 1934 and which was paid in the year that it accrued, but allowed no deduction for the excess interest dividend which was paid on these contracts in each of those years.

XXXVII

Of the \$534,887.54 of such excess interest dividends paid during the year 1933, \$256,746.02 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised

by the insured during his or her lifetime and \$278,141.52 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured.

Of the \$545,463.93 of such excess interest dividends paid during the year 1934, \$256,368.05 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$289,095.88 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured.

The petitioner's claims in these proceedings for deductions in the amount of guaranteed interest accrued in prior years and paid in 1933 and 1934, and for deductions in the amount of the excess interest dividends paid in 1933 and 1934, all as described in this and in the four preceding paragraphs, are in the alternative to its claims for reserve deductions under section 203 (a) (2) of the Revenue Acts of 1932 and 1934 computed upon the amounts described in paragraph XXXI hereof, named "Present Value of Amounts not yet Due on Supplementary Contracts not Involving Life Contingencies" which the petitioner contends are "reserve funds required by law" within the meaning of that section.

[71] The excess interest dividends paid by the petitioner on its Supplementary Contracts Not Involving Life Contingencies, accrued and were paid as follows under the different options set out in Stipulation Exhibit D, exercised as indicated:

	1933	1934
Option 1 exercised by insured.....	\$147,201.05	\$153,820.84
" 2 " " " "	82,158.73	76,910.41
" 4 " " " "	27,386.24	25,636.80
" 1 " " " beneficiary.....	229,930.32	242,840.53
" 2 " " " "	36,158.40	34,691.51
" 4 " " " "	12,052.80	11,563.84
Total.....	\$534,887.54	\$545,463.93

Exhibit D referred to in the stipulation provides in material part as follows:

MODES OF SETTLEMENT AT MATURITY OF POLICY

The Insured may elect to have the net sum due under this policy upon its maturity applied under one or more of the following optional modes of settlement in lieu of the lump sum provided for on the first page hereof, and in the absence of such an election by the Insured, the beneficiary, after the Insured's death, may so elect. The beneficiary, after the Insured's death, may designate (with the right to change such designation) the person to whom any amount remaining unpaid at the death of the beneficiary shall be paid if there be no such person designated by the Insured and surviving. Such election, designation or request for change shall be in writing and shall not take effect until filed with the Society at its Home Office and endorsed upon the policy or the supplementary contract, if any.

1. Deposit Option:

Left on deposit with the Society at interest guaranteed at the rate of 3% per annum, with such Excess Interest Dividend as may be apportioned.

2. Instalment Option:

Fixed Period.

Paid in a fixed number of equal annual, semi-annual, quarterly or monthly instalments as set forth in the following table.

3. Life Income

Option:

Paid in equal annual, semi-annual, quarterly or monthly instalments for five, ten or twenty years certain as may be elected and continuing during the remaining lifetime of the beneficiary as shown in the following table.

4. Instalment Option:

Fixed Amount.

Paid in equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the net sum due under this policy together with interest on the unpaid balances at the rate of 3% per annum, and such Excess Interest Dividends as may be apportioned, shall be exhausted, the final payment to be the balance [72] then remaining with the Society. If the interest and Excess Interest Dividend for any year shall be in excess of the instalments payable in such year, then the total amount of the instalments for the subsequent year shall be increased by the amount of such excess.

Excess Interest Dividend: The foregoing Options are based upon an interest earning of 3% per annum; but if in any year the Society declares that funds held under such Options shall receive interest in excess of 3% per annum, the interest under Option 1, the amount of instalment under Option 2, the amount of income during the fixed period of five, ten or twenty years under Option 3, and the funds held under Option 4, shall be increased for that year by an Excess Interest Dividend as determined and apportioned by the Society.

* * * * *

No option of settlement elected by the Insured hereunder can be changed nor can any payment thereunder be commuted, except by the Insured's written order filed with the Society at its Home Office.

Under Options 2, 3, and 4, the first installment will be due upon receipt of due proof of death. * * *

There is also made a part of the stipulation of facts Exhibit A with regard to an endowment policy. The options granted by this policy are similar to those contained in the ordinary life policy, Exhibit D, the only difference being that upon the maturity of the endowment policy the proceeds may be paid to the insured.

The third option contained in Exhibit D provides for installment payments during the settlement period which ends with the death of the beneficiary. The instant proceeding is not concerned with supplementary contracts involving the third option.

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OPINION.—In its income tax returns for 1933 and 1934 the petitioner treated its supplementary contract reserves not involving life contingencies as “reserve funds required by law” within the meaning of section 203 (a) (2) of the Revenue Acts of 1932 and 1934 and deducted from the gross income of each year $3\frac{3}{4}$ percent of the mean of such reserve funds at the beginning and end of the year. In the determination of the deficiencies the respondent has disallowed the deductions claimed. The petitioner contends that the supplementary contract reserves are “reserve funds required by law” within the meaning of the above mentioned section of the Revenue Acts of 1932 and 1934; in the alternative, it contends that it is at least entitled to deduct from gross income as interest paid on indebtedness all of the interest paid on such supplementary contracts during the taxable years, including the excess interest dividends.

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We consider first the contention of the petitioner that the supplementary contract reserves constitute “reserve funds required by law” within the meaning of section 203 (a) (2) of the Revenue Acts of 1932 and 1934.

[73] In *Helvering v. Illinois Life Insurance Co.*, 299 U. S. 88, the Supreme Court used this language:

* * * Its [the life insurance company's] life insurance liability arises upon the death of the insured. Ascertainment of the reserves attributable to

that liability involves consideration of the amount contributed to them out of premiums plus interest, for a period estimated on the basis of mortality. * * *

In *Helvering v. Inter-Mountain Life Insurance Co.*, 294 U. S. 686, the Supreme Court said:

* * * "reserve funds" may not reasonably be deemed to include values that do not directly pertain to insurance. In life insurance the reserve means the amount, accumulated by the company out of premium payments, which is attributable to and represents the value of the life insurance elements of the policy contracts. * * * Life insurance matures only upon the death of the insured and the life reserve is based upon that contingency, * * *

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Penn Mutual Life Insurance Co., 32 B. T. A. 876, involved the question of whether supplementary contract reserves were "reserve funds required by law" within the meaning of the Revenue Act of 1928. The Board said at page 880:

* * * It will be seen that the Supreme Court interprets "reserve funds required by law" as meaning only the reserve funds held by a life insurance company against the *contingency of death* of the insured. In the instant proceeding the reserve in question represents proceeds of *matured* ordinary life insurance policies which were held under an agreement. These funds were not held subject to the contingency of death of the insured, since the insured had already died. Immediately after that event the petitioner had the money representing the face of the policy in each instance, which was subject to the demand of the beneficiary. Any reserve thereafter carried to meet such demand in reality constituted a reserve to meet the contractual liability of the petitioner to the beneficiary, with whom it stood in the relationship of debtor and creditor. We accordingly hold that the reserve in question did not constitute "reserve funds required by law" within the meaning of section 203 (a) (2) of the Revenue Act of 1928; and upon the recomputation the deduction which was allowed by the respondent will be disallowed.

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The petitioner argues that the question as to whether supplementary contract reserve constitute "reserve funds required by law" was before the court in *Mutual Benefit Life Insurance Co. v. Herold* (1912), 198 Fed. 199; that although that case was concerned with the proper construction of the words "reserve funds required by law" as used in the Corporation Excise Tax Act of 1909, nevertheless, that statute is *in pari materia* with the income tax acts

beginning with 1913; and that the ruling of the court in that case is equally applicable to the instant proceeding. The petitioner further points out that under all of the income tax acts beginning with 1913 through 1934 the respondent has held in his regulations that supplementary contract reserves constitute "reserve funds required by law." Thus, in article 147 (d) of [74] Regulations 33, promulgated under the provisions of the Revenue Act of 1913, and the same article in Regulations 33 (Revised), it is provided:

(d) The reserve funds of insurance companies to be considered in computing the deductible net addition to reserve funds are held to include only the reinsurance reserve and the reserve for supplementary contracts required by law in the case of life insurance companies. * * *

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In article 569 of Regulations 45, approved April 17, 1919, it is provided:

* * * In the case of life insurance companies the net addition to the "reinsurance reserve" and the "reserve for supplementary contracts not involving life contingencies," and the net addition to any other reserve funds necessarily maintained for the purpose of liquidating policies at maturity, are legally deductible. * * *

The same provision was contained in article 569, Regulations 45 (1920 Edition).

Article 681 of Regulations 62, 65, and 69, issued under the Revenue Acts of 1921, 1924, and 1926, provides:

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* * * Generally speaking, the following will be considered reserves as contemplated by the law: Items 7, 8, 9, 10, and 11 of the liability page of the annual statement for life companies, and items 16, 17, 18, 19, and 26 of the liability page of the annual statement for miscellaneous stock companies, if a life insurance company is also transacting other kinds of insurance business. * * *

Article 971 of Regulations 74 and 77, issued under the Revenue Acts of 1928 and 1932, provides in part:

* * * Generally speaking, the following will be considered reserves as contemplated by the law: Items 7-11 of the liability page of the annual state-

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ment for life insurance companies, and items 16-19 and 26 of the liability page of the annual statement for miscellaneous stock companies, if a life insurance company is also transacting other kinds of insurance business. * * *

From the liability page of the annual statements of life insurance companies, referred to in these regulations and used by life insurance companies for the years 1920 to 1925, inclusive, item 9, and, for the years 1926, to 1934, inclusive, item 10 read: "Present value of amounts not yet due on supplementary contracts *not* involving life contingencies."

It was not until Regulations 86 was promulgated under the provisions of the Revenue Act of 1934, approved February 11, 1935, that a change was made in the respondent's regulations relative to the meaning of the phrase "reserve funds required by law" so as to exclude from such reserve funds the so-called supplementary contract reserves. In article 203 (a) (2)-1 of Regulations 86 it was said that the reserve funds required by law referred to by the Revenue Act of 1934 did not include "liability on supplementary [75] contracts not involving life contingencies." Treasury Decision 4615; Cumulative Bulletin XIV-2, p. 310, approved December 18, 1935, amended prior regulations beginning with Regulations 62, issued under the Revenue Act of 1921, to conform to the above ruling made in article 203 (a) (2)-1 of Regulations 86.

The petitioner argues, upon the basis of *Helvering v. Reynolds Tobacco Co.*, 306 U. S. 110, that Congress must be presumed to have intended the Revenue Acts of 1932 and 1934 to be interpreted as prior income tax acts were interpreted with respect to the issue under consideration.

But a regulation of the Commissioner which is contrary to and not consistent with the statute will be disregarded by the courts. See *Morrill v. Jones*, 106 U. S. 466; *Robinson v. Lundrigan*, 227 U. S. 173; *Commissioner v. Winslow*, 113 Fed. (2d) 418. The regulations and prac-

ties of administrative departments are entitled to weight and serious consideration in construing a statute, but it is for the courts to determine the meaning of a statute, and not an executive department of the Government. A Treasury regulation is merely an expression of opinion as to the meaning of the law by the official charged with its enforcement. *Edwards v. Douglas*, 269 U. S. 204; *Weld v. Nichols*, 9 Fed. (2d) 977. We think it clear that the respondent's regulations which have permitted supplementary contract reserves to be regarded as "reserve funds required by law" are contrary to the interpretation placed upon that phrase by the Supreme Court over a long period of years. A question cognate to that herein involved was before the Supreme Court in *New York Life Insurance Co. v. Edwards*, 271 U. S. 109. In that case the insurance company claimed that it was entitled to deduct from gross income as a net addition to reserve funds required by law an increase in its liability in respect of unreported losses. The Court stated:

4. A number of policy holders died during the calendar year, but their deaths were not reported before it terminated. The superintendent of insurance required the company to set aside a special fund to meet these unreported losses, and it claimed that this was an addition to the reserve fund required by law. We think this claim was properly rejected by the commissioner, although the courts below held otherwise. *McCoach v. Insurance Co. of North America*, 37 S. Ct. 709, 244 U. S. 585, 61 L. Ed. 1333, and *United States v. Boston Insurance Co.*, 46 S. Ct. 97, 269 U. S. 197, 70 L. Ed. 232 (November 23, 1925), pointed out that "the net addition, if any, required by law to be made within the year to reserve funds," does not necessarily include whatever a state official may so designate; that "reserve funds" has a technical meaning. It is unnecessary now to amplify what was there said. The item under consideration represented a liability and not something reserved from premiums to meet policy obligations at maturity.

[76] In our opinion the Supreme Court's interpretation of the phrase "reserve funds required by law" must be given effect. The supplementary contract reserves of petitioner represent amounts of assets retained to meet the

company's liabilities upon insurance policies which had already matured. They do not represent assets held against unmatured policies. The petitioner is therefore not entitled to deduct from the gross income of each of the years 1933 and 1934 $3\frac{1}{4}$ percent of the mean of its supplementary contract reserves not involving life contingencies.

The second question for consideration on this issue is the amount of interest which the petitioner is entitled to deduct from gross income in making payments during the taxable years under its supplementary contracts not involving life contingencies.

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Section 203 (a) of the Revenue Act of 1932 provides in material part as follows:

SEC. 203. NET INCOME OF LIFE INSURANCE COMPANIES.

(a) GENERAL RULE.—In the case of a life insurance company the term "net income" means the gross income less—

(8) INTEREST.—All interest paid or accrued within the taxable year on its indebtedness, except [exception not material]. * * *

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Section 203 (a) of the Revenue Act of 1934 is the same as above except that the words "or accrued" have been omitted from subdivision (8).

Treasury Decision 4615, C. B. XIV-2, p. 310, approved December 18, 1935, amends article 975 of Regulations 77 and article 203 (a) (8)-1 of Regulations 86, and provides:

(4) If a life insurance company pays interest on the proceeds of life insurance policies left with it pursuant to the provisions of supplementary contracts, not involving life contingencies, or similar contracts, the interest so paid shall be allowed as a deduction from gross income, except that such deduction shall not be allowed in respect of interest accrued in any prior taxable year to the extent that the company has had the benefit of a deduction of 4 percent or $3\frac{1}{4}$ per cent, as the case may be, of the mean of the company's liability on such contracts, by the inclusion of such liability in its reserve funds.

It is the contention of the petitioner that, if it is not entitled to consider its supplementary contract reserves as "reserve funds required by law", it must be because such reserve funds constitute indebtedness; that, since the applicable statutes and the Commissioner's regulations provide for the deduction from gross income of *all* interest paid upon indebtedness, then the petitioner is entitled to deduct the full amount of the interest as shown by the stipulated facts which it paid during the taxable years 1933 and 1934 pursuant to the provisions of its supplementary contracts. It points [77] out that in *Duffy v. Mutual Benefit Life Insurance Co.*, 272 U. S. 613, the Supreme Court said:

* * * Until the maturity of a policy, the policyholder is simply a member of the corporation, with no present enforceable right against the assets. Upon the maturity of the policy he becomes a creditor with an enforceable right. Then for the first time there is an indebtedness. See *Mayer v. Attorney General*, 32 N. J. Eq. 815, 820-822. In the meantime, each member bears a relation to the mutual company analogous to that which a stockholder bears to the joint stock company in which he holds stock. * * *

The interest with which we are concerned in these proceedings was paid upon supplementary contracts under options 1, 2, and 4 of the policy above set out. Under these options petitioner obligated itself to pay interest or to include in installment settlements interest at the guaranteed rate of 3 percent per annum. It was provided, however, that:

* * * if in any year the Society declares that funds held under such Options shall receive interest in excess of 3% per annum, the interest under Option 1, the amount of instalment under Option 2, * * * and the funds held under Option 4, shall be increased for that year by an Excess Interest Dividend as determined and apportioned by the Society.

We shall consider first the interest paid at the guaranteed rate of 3 percent per annum. On brief the respondent concedes upon the basis of *Penn Mutual Life Insurance Co.*, 32 B. T. A. 876, and *Penn Mutual Life Insurance Co.*

v. Commissioner, 92 Fed. (2d) 962; that the petitioner is entitled to deduct from gross income the guaranteed interest paid pursuant to policy contracts under option 1.

Under option 2 the petitioner obligates itself to make installment payments certain over a period of years, each installment payment to include interest at the guaranteed rate of 3 percent per annum. The respondent contends that the interest included in the installment payments is not deductible from gross income. *In Penn Mutual Life Insurance Co. v. Commissioner, supra*, the United States Circuit Court of Appeals for the Third Circuit held that deductions would be allowed for interest included in installment payments under options exercised by beneficiaries after the death of the insured, but that no deductions would be allowed in such cases where the options had been exercised by the insured. The court said (92 Fed. (2d) at p. 967):

Now dealing with the instalment settlements thus contracted for, under the Trust Certificate policy or under the Ordinary Life policy when the option has been exercised within the lifetime of the insured, we find the obligations thus created are plainly obligations of policy rather than obligations of debt. The face of the policies bears an obligation to pay in instalments and at given dates. There can be no obligation to pay, first, until the policy has matured by the death of the insured, and second, until the arrival of the due dates of the respective instalment payments. Such a policy matures upon the death of the [78] insured. Upon maturity its nature changes from a policy obligation to an obligation of debt, but, before such an obligation of debt can bear interest, it must become due. When the due date arrives it will bear interest and not before.

We understand the reasoning of the court to be that in a case where the insured elects the option the principal of the indebtedness on the maturity of the policy is not the face amount of the policy but the face amount of all of the installment payments to be made in settlement of the policy. Where in such case the insurance company makes an installment payment it is not paying both principal and interest, but is paying principal only. Since

in such case the petitioner is not paying interest on indebtedness, it is not entitled to deduct as interest paid on indebtedness the amount of interest included in the installment payment. We therefore hold with respect to interest paid on supplementary contracts covered by option 2 that the petitioner is entitled to deduct only the amount of interest included in installment payments where the beneficiary after the death of the insured or after the maturity of the policy elects the option.

Under option 4 petitioner obligates itself to make:

* * * equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the net sum due under this policy together with interest on the unpaid balances at the rate of 3% per annum, and such Excess Interest Dividends as may be apportioned, shall be exhausted, the final payment to be the balance then remaining with the Society.

We know of no reason why the interest included in installment payments under option 4 should be treated any differently from the interest in installment payments under option 2. The only difference between the two is that in option 4 the "amount" is fixed, whereas in option 2 the "period" is fixed. We do not think that this difference requires any different treatment so far as the deductibility of the guaranteed interest is concerned. We therefore hold, with respect to interest paid on supplementary contracts covered by option 4, that the petitioner is entitled to deduct only the amount of interest included in installment payments where the beneficiary after the death of the insured or after the maturity of the policy elects the option.

We next consider the question of the excess interest dividends. The facts pertaining to this question are substantially the same as the facts involved in *Penn Mutual Life Insurance Co. v. Commissioner, supra*, under the heading "As to the 'Additional Interest' Awarded to the Policies by the Board of Trustees and Paid Out During

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the Years 1926 and 1928." Under such circumstances it follows that our decision on this question must likewise be the same as in the cited case. We, therefore, sustain the respondent's determination in disallowing as interest paid on indebtedness the amounts of \$534,887.54 [79] for 1933 and \$545,463.93 for 1934. *Penn Mutual Life Insurance Co. v. Commissioner, supra.*

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It will be noted from the excerpt from Treasury Decision 4615, quoted above, that the respondent has held that a life insurance company 'may not deduct from gross income of the taxable year "interest accrued in any prior taxable year to the extent that the company has had the benefit of a deduction of 4 per cent or 3½ per cent, as the case may be, of the mean of the company's liability on such contracts, by the inclusion of such liability in its reserve funds." It has been stipulated that during the years 1933 and 1934 the petitioner paid guaranteed interest in the amount of \$13,432.49 and \$14,237.50, respectively, which interest had accrued in prior years. The respondent contends that by virtue of his regulation the petitioner may not deduct during the years 1933 and 1934 the above mentioned amounts of guaranteed interest paid.

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The petitioner is a life insurance company. It makes its returns on a cash receipts and disbursements basis. Under the respondent's present contention the petitioner was not entitled for years prior to 1933 to include in its "reserve funds required by law" the supplementary contract reserves. By reason of the fact that it made its returns upon such basis for years prior to 1933 the respondent undertakes to correct for 1933 and 1934 an error made in a prior year by disallowing a deduction which the petitioner is entitled to make under the taxing statutes. But mistakes made in the audit of a prior year may not be charged against a taxpayer for a succeeding year. *Wobber Brothers, 35 B. T. A. 890; Schmidlapp v. Commissioner (C. C. A., 2nd Cir.),*

96 Fed (2d) 680, 683. In *Lansing McVickar*, 37 B. T. A. 758, the Board said at page 762: "The error for 1930 may not be corrected by a deliberately erroneous computation of the tax for 1931."

It will be noted from the Commissioner's regulations referred to above that no part of the interest paid on indebtedness during the taxable year is to be disallowed except "to the extent that the company has had the benefit of a deduction of 4 per cent or 3½ percent, as the case may be, of the mean of the company's liability on such contracts, by the inclusion of such liability in its reserve funds." The record does not show that the petitioner had any such benefit during prior years. We are of the opinion that the contention of the respondent upon this point is without merit.

Issue 11.

FACTS.—During the taxable years 1933 and 1934, and prior thereto, the petitioner accepted funds from certain accident and health policyholders [80] under an agreement with each such policyholder that it would hold on demand the fund accepted from him and supplement it with interest at a specified rate; that, in the event the policyholder did not demand the repayment of the fund, it would apply the fund, together with the interest supplement, in payment of premiums subsequently becoming due on the policyholder's policy; but that at any time prior to the due date of such premiums, it would, upon the policyholder's demand, repay the fund to the policyholder. These funds are not included in the amounts of unearned accident and health premiums for which the petitioner herein claims reserve deductions. The interest supplements made by the petitioner in accordance with such agreements, and applied

— during the year to premiums as they become due, amounted to \$4,525.68 in 1933; and to \$5,220.19 in 1934. The respondent in computing the taxes involved in these proceedings allowed no deduction for such interest supplements so made and applied during the taxable years herein involved, and no deduction in respect of the funds supplemented.

OPINION.—If the petitioner had paid the amount of interest here in question to the policyholder there could be no question as to the right to the deduction claimed. See *Pan-American Life Insurance Co.*, 38 B. T. A. 1430. It is the respondent's contention that, since the interest was not paid to the policyholder but was credited to him in settlement of premiums due, the amount does not constitute the payment of interest on indebtedness. In support of his position the respondent cites *Illinois Life Insurance Co.*, 30 B. T. A. 1160, in which we held that, where a life insurance company accepted the payment of premiums in advance and granted a discount on the payment, the amount of the discount did not constitute the payment of interest upon indebtedness. This was for the reason that the insurance company was not indebted to the policyholder for anything. Those are not the facts here. The petitioner owed the policyholder interest upon a deposit of money made by him. The payment of the interest in liquidation of a liability of the policyholder to the petitioner constitutes a payment within the meaning of the income tax act. Thus in *Lynchburg Trust & Savings Bank v. Commissioner*, 68 Fed. (2d) 356; certiorari denied, 292 U. S. 640, in quoting from *Commissioner v. Stearns* (C. C. A. 2d Cir.), 65 Fed. (2d) 371, 373, it was said: “‘Credit’ for practical purposes is the equivalent of ‘payment’.” Clearly if A owes B \$10 interest upon a note and B owes A an equal amount for merchandise purchased, the credit by A to B's account of \$10 is a payment of the interest by A of the \$10. The situa-

tion here is parallel. The action of the respondent upon this issue is reversed.

[81]

Issue 13.

FACTS.—During the taxable years 1933 and 1934 petitioner owned and in part occupied its home office building located at 393 Seventh Avenue, New York City. This building was constructed on a cost plus basis. Petitioner capitalized as a part of the cost of the building the architect's fee, the contractor's fee, and certain other miscellaneous general expenses incurred in the course of construction in the total amount of \$1,651,214.92, not allocated to the cost of the various component elements of the building. These various component elements of the building such as steel, plumbing, elevators, etc., are depreciated at appropriate rates upon the basis of their respective costs which do not include any part of the above mentioned capitalized general expenses. These capitalized general expenses consist of the following:

General conditions	\$419,260.19
Contractor's fee	492,397.95
Architect's fee	524,861.19
Home office supervisors	189,729.32
Own alterations	24,966.27

260

261

A reasonable allowance for depreciation in respect of the above building costs for each of the years 1933 and 1934 is $2\frac{1}{2}$ percent of the amount of these capitalized costs.

OPINION.—The respondent claims that the petitioner is not entitled to depreciation in respect of the above referred to capitalized costs of \$1,651,214.92 upon the ground that they represent the cost of intangibles. As we understand the respondent's position it is that they can not be allocated to the various component elements of the building, such as steel, plumbing, elevators, etc.

The evidence of record shows the break-up of the above referred to costs. We do not perceive any reason why all of the capitalized costs are not a part of the cost of petitioner's building. Clearly the architect's fee and the contractor's fee are as much a part of the cost of the building as the wages paid to the masons, carpenters, etc. All of these items represent a part of the cost of the building. It is immaterial that they can not be allocated to the component elements of the building subject to depreciation at different rates. The parties have stipulated that a reasonable rate for depreciation upon these capitalized costs, if they are subject to a depreciation allowance, is $2\frac{1}{2}$ percent. We hold that these capitalized costs are depreciable and that the petitioner is entitled to a depreciation allowance for each year at the stipulated rate.

Reviewed by the Board.

Decision will be entered under Rule 50.

[82]

STERNHAGEN did not participate in the consideration of or decision in this report.

BLACK, dissenting: I dissent from that part of the majority opinion which holds that the reserve maintained by petitioner for the ultimate payment of its obligations in respect of amounts not yet due on supplementary contracts not involving life contingencies are not reserves required by law.

I think these reserves are "Reserve funds required by law," within the meaning of section 203 of the Revenue Act of 1932 and 1934, which are applicable to these proceedings. I, therefore, think that under this section petitioner is entitled, in determining its net income, to a deduction of

3½ per cent of the mean of the reserve funds in question held at the beginning and the end of the taxable years.

It seems to me that these particular reserves are just as valid and essential as any that the life insurance companies are required to maintain. As said by the court in *Mutual Benefit Life Insurance Co. v. Herold*, 198 Fed. 199; affirmed on another point, 201 Fed. 918; certiorari denied, 231 U. S. 755, "These obligations seem to come fairly within the definitions of reserve, as above given. Notwithstanding the policy-holder has died, there still remain unpaid under the policy certain installments not presently due, but which will mature from time to time in the future. These are as much policy obligations as they would have been if payable in one sum immediately upon the death of the insured. They have a value, and that value must be estimated, and, when estimated, adequate provision made for their payment as they mature, which can only be done by the establishment of a suitable reserve. Furthermore, such reserves are 'required by law' within the meaning of the act. As appears by the agreed statement of facts, the commissioners of insurance of all the states require the establishment of a reserve to cover the obligations of the company on such supplementary policy contracts. This fact of itself tends strongly to show that they are required by law."

266

While it is true that *Mutual Benefit Life Insurance Co. v. Herold, supra*, was decided in 1912, and dealt with the Corporation Tax Act of 1909, nevertheless I think what the court said respecting reserves for the fulfillment of obligations under these supplementary contracts not involving life contingencies being "reserves required by law" is entirely appropriate to the revenue acts which are applicable in the instant proceedings. The taxable years which we have before us are the years 1933 and 1934 and the applicable regulations are Regulations 77 and Regulations 86.

267

[83] At the time petitioner filed its income tax return

for the year 1933, the Treasury Regulations (art. 971, Regulations 77) held that the type of reserve here involved was a reserve required by law. Substantially the same provisions were contained in all of the regulations issued under all of the revenue acts beginning with the Revenue Act of 1921. Shortly after the Court of Claims handed down its decision in *Continental Assurance Co. v. United States*, 8 Fed. Supp. 474, the Treasury changed its regulations and provided that certain reserves maintained by life insurance companies which had been recognized in the regulations as "reserves required by law" should no longer be so considered. One of these was a reserve maintained for supplementary contracts not involving life contingencies.

269 In *Pan-American Life Insurance Co.*, 38 B. T. A. 1430, we discussed in considerable detail this change in the Treasury regulations and we pointed out that there had been no corresponding change in the statute which would justify such a change in the regulations.

We held that the Commissioner's changed regulations were invalid as to reserves for incurred but not yet accrued disability benefits maintained by the taxpayer insurance company, and that these reserves were reserves required by law, and that the taxpayer was entitled to deduct $3\frac{3}{4}$ percent of the mean of these reserves held at the beginning and end of the taxable year. Our decision was affirmed by the Fifth Circuit, 111 Fed. (2d) 366, and was affirmed by the Supreme Court in *Helvering v. Pan-American Life Insurance Co.*, 311 U. S. 372. In that opinion and in the opinion of *Helvering v. Oregon Mutual Life Insurance Co.*, 311 U. S. 267, decided on the same day, the Supreme Court referred to the change in regulations made by the Commissioner referred to above and held that such change, in so far as it affected the reserves involved in those cases, was beyond the statute and was therefore invalid. While it is true that the Supreme Court's decisions in the *Oregon*

Mutual Life Insurance Co. and the *Pan-American Life Insurance Co.* cases involved disability reserves and not reserves for supplementary contracts not involving life contingencies, as here involved, nevertheless I think the same fundamental reasoning which caused the Supreme Court to hold that disability reserves are reserves "required by law" would require a holding that reserves to meet an insurance company's liability under its supplementary contracts, is a reserve "required by law." I think that would be particularly true as to those policies where the insured himself has directed that the deferred payment plan of settlement with the beneficiary be used. As to the reserves maintained to ultimately pay these policies improved annually by interest, the Commissioner has denied all deduction for interest because, as he says, when these options [84] of settlements have been elected by the insured within his lifetime the obligations thus created are the obligations of the policy rather than obligations of debt. This view has been upheld by the Third Circuit in *Penn Mutual Life Insurance Co. v. Commissioner*, 92 Fed. (2d) 962, and by the Fifth Circuit in *Pan-American Life Insurance Co.*, *supra*, and is upheld in the majority opinion in the instant case.

272

If these decisions are correct on this point, and I think they are, then plainly the option settlements where elected by the insured in his lifetime are policy obligations and reserves to insure payment of these obligations are reserves "required by law" within the meaning of the applicable statute and the majority opinion errs in disallowing a deduction of $3\frac{3}{4}$ percent of the mean of these reserves in determining petitioner's net income for the years 1933 and 1934. It follows of course that if petitioner were allowed a deduction of $3\frac{3}{4}$ percent of the mean of these reserves, it would not be entitled to a deduction for interest. This, petitioner concedes.

273

It may well be that a different rule applies to these policies where after the decedent dies the beneficiary of the policy elects to leave the proceeds with the life insurance company and take deferred settlements including interest rather than lump sum payments. As to these the majority opinion allows the deduction of guaranteed interest, following *Penn Mutual Life Insurance Co. v. Commissioner, supra*, and *Pan-American Life Insurance Co., supra*, and disallows the deduction of $3\frac{3}{4}$ percent of the mean of the reserves applicable to these particular supplementary contracts.

275

As to that part of the majority opinion there may be considerable logic to support it. The strongest impediment against it would be the Commissioner's own regulations from 1921 to 1932, inclusive. But be that as it may, I do emphatically disagree as to the holding of the majority concerning the reserves maintained by petitioner to fulfill its obligations on those supplementary contracts which represent elections made by the insured during his lifetime and which both the Board and the courts have held to be policy obligations and not mere indebtedness created by choice of the beneficiary, after the death of the insured.

ARUNDELL agrees with this dissent.

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44 B. T. A.

[85]

277

UNITED STATES BOARD OF TAX APPEALS,
WASHINGTON.

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner.

vs.

Docket No.
89294

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

278

Decision.

Pursuant to the opinion of the Board promulgated April 29, 1941, the respondent herein on July 5, 1941 having filed a recomputation of tax and the petitioner on July 16, 1941 having filed an agreement to such recomputation, now, therefore, it is

ORDERED and DECIDED: That there is an overpayment of income tax for the calendar year 1935 in the amount of \$40,173.79, all of which amount was paid after the mailing of the deficiency notice (Sec. 809 [c], Revenue Act of 1938).

279

(Signed) C. R. ARUNDELL,
Member.
[Seal]

Enter:

Entered Jul. 17, 1941.

280 [86]

UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT.

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner on Review,

against

281 GUY T. HELVERING, Commissioner of
Internal Revenue,

Respondent on Review.

B. T. A.
Docket No.
89294

Petition for Review.

To the Honorable Judges of the United States Circuit
Court of Appeals for the Second Circuit:

Now comes The Equitable Life Assurance Society of
the United States, by its attorney, Campbell E. Locke, and
respectfully shows:

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I

The petitioner on review (hereinafter referred to as
the petitioner) is The Equitable Life Assurance Society
of the United States, a corporation organized and existing
under and by virtue of the laws of the State of New York,
and is an inhabitant of the judicial circuit of the United
States Circuit Court of Appeals for the Second Circuit.
At all times throughout the year 1933 and for many years
prior thereto, the petitioner was engaged in the business
of issuing and selling life insurance and annuity contracts
(including contracts of combined life, health and accident
insurance), holding more [87] than fifty per centum of its

Petition for Review.

reserve funds for the fulfillment of such contracts, and having, as it still does, its principal office and place of business at 393 Seventh Avenue, Borough of Manhattan, City, County and State of New York.

II

The respondent on review (hereinafter referred to as the Commissioner) is the Commissioner of Internal Revenue, holding his office by virtue of the laws of the United States.

NATURE OF THE CONTROVERSY

III

The petitioner filed its income tax return for the calendar year 1933, being the taxable year involved herein, with the Collector of Internal Revenue for the Third District of New York, at his office which is located within the judicial circuit of the United States Circuit Court of Appeals for the Second Circuit.

IV

On March 6, 1937, the Commissioner sent a notice to the petitioner by registered mail, of a deficiency which he had determined in the petitioner's income taxes for the year 1933 in the amount of \$267,677.39. Thereafter, on June 1, 1937, the petitioner filed a petition with the United States Board of Tax Appeals for a redetermination of the deficiency, praying the Board to find that there was no deficiency and to find further that the petitioner had made an overpayment of its income tax for the year 1933 in the amount of \$182,168.23, [88] being the sum of three deficiencies for that year totalling \$160,338.66 together with interest on those deficiencies totalling \$21,829.57, all of which had been determined by the Commissioner, assessed by the

Petition for Review.

Collector and paid by the petitioner prior to March 6, 1937. The Commissioner filed his answer on July 21, 1937. Amended answers, amendments to the petition, a reply and an amended reply were subsequently filed.

V

287

This proceeding was duly consolidated for hearing and decision with another proceeding involving the same issues in respect to the petitioner's income taxes for 1934. No appeal is taken by the petitioner from the Board's decision in the latter proceeding. At the hearing on May 26, 1939, the consolidated proceedings were submitted to the Board upon a stipulation of facts, a supplementary stipulation of facts and exhibits, all of which were made a part of the Board's findings. The consolidated proceedings were reviewed by the Board which promulgated its opinion on April 29, 1941, together with a dissenting opinion in which two Board Members concurred. On July 17, 1941, the Board entered its final order of redetermination and decision to the effect that there was no deficiency due for the year 1933 and that the petitioner had made an overpayment of its income tax for that year in the amount of \$40,173.79.

268

VI

In his determination the Commissioner had refused to allow a reserve deduction claimed by the petitioner under Section 203(a)(2) of the Revenue Act of 1932 on account of its [89] Reserve for Supplementary Contracts Not Involving Life Contingencies, a fund maintained with interest by the petitioner through the year 1933 to provide for its obligations arising as follows:

Life insurance policies issued by the petitioner during and prior to the year 1933, provided that any of four optional modes of settlement, in lieu of a lump sum payment,

might be elected by the insured or, in the event the insured should elect none, by the beneficiary. These options when elected in accordance with the policy provisions are known as "supplementary contracts," and they require the petitioner to hold the proceeds of the policies after maturity, supplement these proceeds with interest (at the rate guaranteed in the policy together with "excess interest dividends" at a rate determined for each year by the petitioner's Board of Directors), and to pay out the face amounts of such policies so supplemented with interest, in instalments or otherwise, over varying periods of time. One of these options, designated Option 3, which provides for payments conditioned upon the life of the beneficiary, is not involved in this proceeding. Payments under the other three options designated Options 1, 2 and 4, provided for in the petitioner's policies, were not contingent upon the life of the beneficiary, and these three options, when elected in accordance with the terms of the policy, are known as Supplementary Contracts Not Involving Life Contingencies.

VII

[90] To provide for payments to become due in the future under these Supplementary Contracts Not Involving Life Contingencies, the petitioner throughout 1933 was required by law in the States where it was doing business, to maintain a fund at all times equal to the present value of such future payments. The amount of this fund, so required and so maintained, was, at the beginning of 1933, \$34,806,201, and at the end of 1933 it was \$42,326,682. The mean of these two amounts is \$38,566,441.50. In computing the petitioner's taxes the Commissioner, on the ground that this fund is not a reserve fund within the meaning of Section 203(a)(2) of the Revenue Act of 1932, refused to allow a deduction of 3 3/4% of this mean amount. As to this item, the Board, in its decision, sustained the Commissioner's determination, and the petitioner seeks a review of the decision in that regard.

Petition for Review.

VIII

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In his answer as amended, the Commissioner asserted that he had erred in allowing the petitioner a deduction for interest at the guaranteed rate paid during the year on the Supplementary Contracts involved herein, a deduction which the petitioner claimed only as an alternative to the reserve deduction described above. On brief the Commissioner conceded that the allowance of this deduction was proper as to one type of the exercised options, designated Option 1. As to the remaining types, designated Options 2 and 4, the Board decided that where the options had been exercised, not by the beneficiary, [91] but by the insured, the petitioner was not entitled to a deduction, as interest paid on indebtedness, of \$231,977 of guaranteed interest paid during the year on options of these types, so exercised, and the petitioner seeks a review of the decision in that regard.

IX

294

The petitioner claimed that if it was not entitled to a reserve deduction on account of its Reserve for Supplementary Contracts Not Involving Life Contingencies, it was entitled to a deduction as interest paid on indebtedness of the amount of all interest paid during the year on these supplementary contracts, including \$534,887.54 of excess interest called "excess interest dividends," determined and paid during the year pursuant to the policy provisions under which the options had been exercised. The Board, upholding the Commissioner, decided that the petitioner was not entitled to a deduction of the excess interest so paid, and the petitioner seeks a review of the decision in that regard.

X

There is no dispute as to the facts, all facts material to the issues involved, which had to be proved by either

Petition for Review:

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party, having been set out in writing, agreed to and stipulated by the parties, and found by the Board as so stipulated and agreed.

COURT IN WHICH REVIEW IS SOUGHT**XI**

The petitioner seeks a review of the Board's decision by [92] the United States Circuit Court of Appeals for the Second Circuit.

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ASSIGNMENTS OF ERROR**XII**

There is manifest error in the opinion, decision and final order of redetermination rendered and entered herein by the United States Board of Tax Appeals, to the prejudice of the petitioner, who assigns the following errors and each of them as having occurred in the said opinion, decision and final order of redetermination:

1. The Board erred in failing to find and decide that the petitioner had overpaid its income taxes for the year 1933 in the sum of \$182,168.23, and is entitled to a refund thereof.
2. The Board erred in deciding, determining and ordering that the petitioner's Reserve for Supplementary Contracts Not Involving Life Contingencies was not a reserve fund for which a deduction is allowable by Section 203(a)(2) of the Revenue Act of 1932.
3. The Board erred in failing to find and decide that the petitioner was entitled, under Section 203(a)(2) of the Revenue Act of 1932, to a reserve deduction in the amount

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Petition for Review.

of \$1,446,241.56, being 3 $\frac{3}{4}$ % of the mean of the petitioner's reserve fund for Supplementary Contracts Not Involving Life Contingencies required by law and held at the beginning and end of the taxable year 1933.

4. The Board erred in deciding, determining and ordering [93] that the petitioner's obligations under options 2 and 4 of the optional modes of settlement at maturity contained in its policies, which had been exercised by the insured in accordance with the provisions of the policies, did not constitute indebtedness within the meaning and intent of Section 203(a)(8) of the Revenue Act of 1932.

5. The Board erred in deciding, determining and ordering that the petitioner was not entitled to a deduction as interest paid on indebtedness, within the meaning and intent of Section 203(a)(8) of the Revenue Act of 1932, of the guaranteed interest which the petitioner paid during the year 1933 pursuant to its policy provisions, upon its Supplementary Contracts Not Involving Life Contingencies which arose from the insured's exercise of said options 2 and 4, in the amount of \$231,977.

6. The Board erred in deciding, determining and ordering that the excess interest which the petitioner paid during the year 1933 upon its Supplementary Contracts Not Involving Life Contingencies, pursuant to the policy provisions under which options of settlement at maturity were exercised, and determined pursuant to those provisions, did not constitute interest paid on indebtedness within the meaning and intent of Section 203(a)(8) of the Revenue Act of 1932.

7. The Board erred in deciding, determining and ordering that the petitioner was not entitled to a deduction as interest paid on indebtedness, within the meaning and in-

tent of Section 203(a)(8) of the Revenue Act of 1932, of excess interest which the petitioner paid during the year 1933 pursuant to the [94] policy provisions of its policies in the amount of \$534,867.54, determined pursuant to those provisions, on its Supplementary Contracts Not Involving Life Contingencies which arose from the exercise of options 1, 2 and 4 of the optional modes of settlement at maturity contained in the policies.

8. The Board erred in its conclusions of law and in its application of the law to the facts in deciding, determining and ordering that the petitioner was not entitled to the deductions disallowed as set forth above.

9. The Board erred in that there is no finding of fact in its findings nor in its opinion to sustain the Board's conclusions of law upon which the deductions set forth above were disallowed.

10. The Board erred in that its opinion, decision, determination and order as to these disallowed deductions, based upon its findings of fact, are contrary to law.

WHEREFORE, the petitioner prays that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Second Circuit, and that a transcript of the record be prepared in accordance with the law and with the rules of said Court for filing and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

CAMPBELL E. LOCKE,
 CAMPBELL E. LOCKE,
 Attorney for Petitioner on Review,
 120 Broadway,
 New York, N. Y.

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Petition for Review.

[95]

State of New York, }
 County of New York, } ss.:

ANDREW E. TUCK, being duly sworn, says that he is a Vice President of the petitioner in the above entitled proceeding; that he has read the foregoing petition for review and knows the contents thereof, and that said petition is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

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ANDREW E. TUCK.

Subscribed and sworn to before me
 this 22nd day of September, 1941.

HENRY M. ENSOR,
 Notary Public.

(Seal)

Bronx County No. 27, Reg. No. 20-E-43.
 Cert. filed in N. Y. Co. No. 117, Reg. No. 3-E-84.
 Commission Expires March 30, 1943.

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[96]

UNITED STATES CIRCUIT COURT OF APPEALS,
SECOND CIRCUIT.

307

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,
Petitioner on Review,

against

GUY T. HELVERING, Commissioner of
Internal Revenue,*Respondent on Review.*B. T. A.
Docket No.
89294

308

Notice of Filing Petition for Review.

To

Guy T. Helvering,
Commissioner of Internal Revenue,
Washington, D. C.J. P. Wenchel, Chief Counsel,
Bureau of Internal Revenue,
Washington, D. C.

You are hereby notified that The Equitable Life Assurance Society of the United States, the petitioner in the above entitled proceeding, did on the 7th day of October, 1941, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit of a decision of the Board heretofore rendered in the above entitled proceeding. A copy of the petition for review and assignments of error as filed is hereto attached and served upon you.

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Dated this 8th day of October, 1941.

CAMPBELL E. LOCKE,
Attorney for Petitioner on Review,
120 Broadway,
New York, N. Y.

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Stipulation of Facts.

Service of a copy of the petition for review is hereby acknowledged this 10th day of Oct., 1941.

(Sgd.) J. P. WENCHEL,
Chief Counsel, Bureau of Internal Revenue.

[97]

UNITED STATES BOARD OF TAX APPEALS.

311

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner,

vs.

Docket Nos.
89294 and
93805

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Stipulation of Facts.

It is hereby stipulated and agreed by and between the
312 parties hereto, by their respective counsel, that the following facts shall be taken as true, provided however, that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be true:

I

At all times material herein the petitioner, hereinafter sometimes called "the taxpayer," is and was a mutual insurance company; a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business at 393 Seventh

Avenue, Borough of Manhattan, City, County and State of New York, and engaged in the business of issuing and selling life insurance and annuity contracts (including contracts of combined life, health and accident insurance) and accident and health insurance contracts.

[98]

II

(a) The taxpayer commenced business in the State of New York in the year 1859 as a stock life insurance company and was converted under the Insurance Law of New York to a mutual life insurance company in the year 1925. From the year 1859 continuously to the present time, the taxpayer has been duly authorized to transact the business of life insurance and other kinds of insurance in the State of New York and has been transacting such business in that State pursuant to the laws thereof.

(b) From sometime prior to the taxable year 1933 continuously to the present time, the taxpayer has been duly authorized in every State of the United States, except Texas, to transact business of issuing life insurance and annuity contracts and has been transacting that business in each such State pursuant to the laws thereof. During this entire time more than fifty per centum of the taxpayer's total reserve funds have been held for the fulfillment of its life insurance and annuity contracts.

(c) For the years 1933 and 1934 and for the preceding years the taxpayer, as required by the laws of the State of New York, made annual reports (herein called annual statements) to the Superintendent of Insurance of the State of New York upon blanks which were furnished by him and which were in the form adopted for life insurance companies by the National Convention of Insurance Commissioners.

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315

Stipulation of Facts.

III

(a) The respective copies of the notices of deficiencies and of the accompanying statements and schedules attached to the petitions and marked "Exhibit A" are true copies of such notices, statements and [99] schedules mailed by the respondent to the taxpayer on the following dates:

Docket No. 89294	March 6, 1937
Docket No. 93805	February 28, 1938

(b) The taxes in controversy are income taxes for the calendar years 1933 (Docket No. 89294) and 1934 (Docket No. 93805).

(c) Income taxes assessed against the taxpayers for the year 1933 have been collected from the taxpayer in the following amounts on the dates indicated:

<i>Date</i>	<i>Deficiency</i>	<i>Interest</i>	<i>Total</i>
March 3, 1936	\$58,642.16	\$6,801.69	\$ 65,443.85
April 28, 1936	56,733.90	7,078.12	63,812.02
March 8, 1937	44,962.60	7,949.76	52,912.36
			\$182,168.23

The above payments were made in satisfaction of assessments set out in Schedule 2 of page 5 of the notice of deficiency dated March 6, 1937 (Exhibit A of petition in Docket Number 89294) under the classification: "Total previously assessed."

IV

Petitioner issues various standard forms of life insurance policies such as Ordinary Life, Twenty Payment Life,

Endowment, etc., all of which are issued on the participating plan, and some of which also include provisions for total and permanent disability benefits and/or additional accidental death benefits. The total premium shown on the face of each policy covering combined life, health and accident insurance includes: (1) The premium paid for the life insurance coverage; and (2) the premium paid for the disability coverage; and/or (3) the premium paid for [100] the additional accidental death coverage. The premium paid for the disability coverage and the premium paid for the additional accidental death coverage are stated separately elsewhere in the policy.

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The terms of each policy include the following:

(1) The cancellation or the termination of the life insurance automatically cancels or terminates the disability and/or the accident insurance.

(2) The policyholder may discontinue the disability and/or the accident insurance on any policy anniversary date without canceling the life insurance and without affecting the life insurance premium. In such event, the total premium shown on the face of the policy would be reduced by the amount of the premium for disability insurance and/or the amount of the premium for accident insurance specified in the policy.

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(3) The disability and additional accidental death benefits are not included in any paid-in term insurance, or other paid-up benefits granted upon the surrender or lapse of the policy; nor does any reserve held on account thereof reduce the amount of the reserve held on account of the life insurance covered by the policy, or increase the surrender, cash, or loan value shown in the "Table of Loan and Non-forfeiture Values."

V

[101] The various reserve liabilities and other liabilities of the petitioner are constantly changing. An item which

Stipulation of Facts.

constitutes part of one reserve now may, within a few hours constitute part of a different reserve, be divided between two reserves, or cease to be a part of any reserve. But the petitioner usually values its reserves, i. e., computes its various reserve liabilities, only as of the close of business on December 31st of each year and as of such other date as called for by State authorities, generally as of the close of business on the last day of each quarter.

The expression "transferred from a reserve as of a valuation date," as used in this stipulation, indicates that the amount or item referred to has ceased to be a part of that reserve liability since an earlier valuation date and has not been included in the later valuation. In like manner the expression "transferred to a reserve" indicates that the item referred to has become a part of this reserve liability since an earlier valuation date and is included in the later valuation.

The use of the terms "reserve," "reserve fund" and "reserve liability" in this stipulation to describe any liability or amount pertaining to the issues involved herein, is not to be deemed an admission by the respondent that such liability or amount is a "reserve."

Attached hereto and marked "Stipulation Exhibit A" and made a part hereof is a sample combined life, health and accident insurance policy issued on January 1, 1933, to John Doe, at age 35, for \$1,000, on the twenty year endowment plan, premiums payable for twenty years, and containing provisions for total and permanent disability and additional accidental death benefits. The total annual premium for the combined life, health and accident insurance [102] is \$56.99, as shown on the first page of said sample policy. The annual premium for total and permanent disability benefits is \$4.08 and the annual premium

Stipulation of Facts.

for additional accidental death benefits is \$1.00 as also shown on the first page of said sample policy. The fourth page thereof contains the usual provisions pertaining to total and permanent disability benefits and additional accidental death benefits, respectively.

[103]

XXXI

During and prior to the calendar years 1933 and 1934, the taxpayer issued life insurance policies which gave to the insured and in some cases to the beneficiary the right to require the taxpayer to apply the net sum due under the policy upon its maturity, in accordance with one of the optional modes of settlement set up in Stipulation Exhibit D attached hereto and made a part hereof. Options exercised under provisions 1, 2 or 4 of Stipulation Exhibit D are generally known as "Supplementary Contracts not Involving Life Contingencies" and are so referred to in these proceedings. To provide for the payment of life policies which had matured and were payable during 1933 and subsequent years under these "Supplementary Contracts not Involving Life Contingencies" the petitioner carried on its books a liability (which the petitioner contends is a reserve liability) named "Present Value of Amounts not yet Due on Supplementary Contracts not Involving Life Contingencies," in the following respective amounts at the beginning and end of the calendar years 1933 and 1934:

<i>Year</i>	<i>Beginning of Year</i>	<i>End of Year</i>
1933	\$34,806,201.00	\$42,326,682.00
1934	42,326,682.00	53,942,995.00

The mean of these amounts for 1933 is \$38,566,441.50 of which 48% was held in respect of supplementary contracts arising from options exercised by the insured during his

Stipulation of Facts.

or her lifetime, and 52% was held in respect of supplementary contracts arising from options exercised by the beneficiaries after the policies involved had matured.

The mean of these amounts for 1934 is \$48,134,838.50 of which 47% was held in respect of supplementary contracts arising from options exercised by the insured during his or her lifetime, and 53% was held in respect of supplementary contracts arising from options exercised by the beneficiaries after the policies involved had matured.

[104] This liability carried on petitioner's books was an amount which, if maintained with annual interest increments, would exactly equal petitioner's obligations under the Supplementary Contracts Not Involving Life Contingencies. The obligations arising under these option contracts were absolute obligations of the petitioner and were not in any sense contingent upon the happening of future events. For the purpose of providing for these obligations, the taxpayer was required to accumulate and maintain this liability by the statutes of the states in which it was then doing business and by the rulings of state officials made pursuant to authority conferred upon them by such statutes, and as so required the petitioner at all times held admitted assets sufficient to provide for this and all other reserves and/or liabilities. In computing the taxes involved in these proceedings, the respondent determined that the liability called "Present Value of Amounts not yet Due on Supplementary Contracts not Involving Life Contingencies" and that portion of petitioner's admitted assets held to provide therefor, did not constitute a reserve fund within the meaning of the Revenue Acts of 1932 and 1934 and allowed no deduction in respect to it under section 203 (a)(2) of said Revenue Acts, but did allow deductions under section 203 (a)(8) of those Acts for the "guaranteed interest" paid by the petitioner on these "Supplementary Contracts not Involving Life Contingencies," which accrued during

the taxable year and was paid in that year. The deduc-

Stipulation of Facts.

tion allowed by the respondent for such "guaranteed interest" accrued and paid during the year was \$1,118,594.00 for 1933 and \$1,315,000.00 for the year 1934.

XXXII

Of the \$1,118,594.00 allowed as a deduction for such "guaranteed interest" paid during the year 1933, \$538,984.00, was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$579,610.00 [105] was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured. Of the \$1,315,000.00 allowed as a deduction for such "guaranteed interest" paid during the year 1934, \$624,097.00 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$690,903.00 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured. In these proceedings the respondent maintains that he erred in so far as he allowed deductions with respect to the "guaranteed interest." The term "guaranteed interest" is herein used in the same sense as it is used in the Supplementary Contracts set out in the Stipulation Exhibit D.

XXXIII

The petitioner paid "guaranteed interest" which had accrued in prior years on these supplementary contracts at the guaranteed rate of 3 per cent, in the amount of \$13,432.49 in 1933 and in the amount of \$14,237.50 in 1934.

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Stipulation of Facts.

The respondent, in computing the taxes involved in these proceedings, allowed no deductions for these amounts of "guaranteed interest" which accrued in prior years but which were paid during the taxable years involved herein.

XXXIV

385

Of the \$13,432.49 disallowed as a deduction for such "guaranteed interest" paid during the year 1933, \$5,238.67 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$8,193.82 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured. Of the \$14,237.50. [106] disallowed as a deduction for such "guaranteed interest" paid during the year 1934, \$5,552.63 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$8,684.87 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured.

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XXXV

In 1933 and 1934, at the beginning of each calendar year, the petitioner by resolution of its Board of Directors declared an excess interest dividend over and above the guaranteed 3 per cent per annum with respect to the amounts held by it under the "Supplementary Contracts not Involving Life Contingencies." The term "excess interest dividend" is herein used in the same sense as it is used in the supplementary contracts as set out in Stipulation

Stipulation of Facts.

Exhibit D attached hereto and made a part hereof. Respondent determined that such excess interest dividends did not constitute interest within the meaning of section 203 (a)(8) of the Revenue Acts of 1932 and 1934.

XXXVI

The petitioner paid excess interest dividends which accrued during the year on its "Supplementary Contracts not Involving Life Contingencies," at the rate declared for the year by its Board of Directors, in the amount of \$534,887.54 in 1933 and in the amount of \$545,463.93 in 1934. In computing the taxes involved in these proceedings the respondent allowed deductions under section 203 (a)(8) of the Revenue Acts of 1932 and 1934, in the amounts stated in paragraph XXXI of this stipulation, for the "guaranteed interest" which accrued on these supplementary contracts during each of the years 1933 and 1934 and which was paid in the year that it accrued, but allowed no deduction for the excess interest dividend which was paid on these contracts [107] in each of those years.

XXXVII

Of the \$534,887.54 of such excess interest dividends paid during the year 1933, \$256,746.02 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the insured during his or her lifetime and \$278,141.52 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured.

Of the \$545,463.93 of such excess interest dividends paid during the year 1934, \$256,368.05 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by

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Stipulation of Facts.

the insured during his or her lifetime and \$289,095.88 was paid with respect to Supplementary Contracts Not Involving Life Contingencies Arising out of Options which were exercised by the beneficiaries after the policies involved had matured.

341 The petitioner's claims in these proceedings for deductions in the amount of guaranteed interest accrued in prior years and paid in 1933 and 1934, and for deductions in the amount of the excess interest dividends paid in 1933 and 1934, all as described in this and in the four preceding paragraphs, are in the alternative to its claims for reserve deductions under section 203 (a). (2) of the Revenue Acts of 1932 and 1934 computed upon the amounts described in paragraph XXXI hereof, named "Present Value of Amounts not yet Due on Supplementary Contracts not Involving Life Contingencies" which the petitioner contends are "reserve funds required by law" within the meaning of that section.

[108] Dated, May 23, 1939.

342

(Sgd) CAMPBELL E. LOCKE.

CAMPBELL E. LOCKE,
Counsel for Petitioner.

J. P. WENCHEL,
E. O. H.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

A MUTUAL COMPANY

ORGANIZED JULY 26, 1859

HEREBY INSURES THE LIFE OF

--- JOHN DOE ---
(HEREIN CALLED THE INSURED)

And agrees to pay at its Home Office in the City of New York

--- ONE THOUSAND --- Dollars,
(HEREIN CALLED THE FACE AMOUNT)

to the Insured
the First day of January, Nineteen hundred
and Fifty-three, the date of the maturity of the Endowment, if the Insured be
then living, or, in the event of the Insured's death prior to said date

to the Insured's wife, --- MARY DOE --- beneficiary
(with the right to the Insured to change the beneficiary or assign this policy)

upon receipt of due proof of the Insured's death, provided premiums have been duly paid and
this policy is then in force and is then surrendered properly released. And the Society agrees to
INCREASE THE AMOUNT SO PAYABLE

to --- TWO THOUSAND --- Dollars,
in event of the Insured's **DEATH FROM ACCIDENT**, as defined in the Double Indemnity pro-
vision on the fourth page hereof, subject to the conditions therein set forth, provided such death
occurs prior to the maturity of the Endowment. And if the Insured, before the anniversary of
the Register date of this policy upon which the Insured's age at nearest birthday is 60 years,
becomes **TOTALLY** and presumably **PERMANENTLY DISABLED** as defined in the Total and
Permanent Disability provision on the fourth page hereof, the Society will, subject to the con-
ditions of such provision, waive subsequent premiums and pay to the Insured a

and Fifty-three, the date of the maturity of the Endowment, if the Insured be then living, or, in the event of the Insured's death prior to said date

to the Insured's wife, --- M A R Y D O E --- beneficiary
(with the right to the Insured to change the beneficiary or assign this policy)

upon receipt of due proof of the Insured's death, provided premiums have been duly paid and this policy is then in force and is then surrendered properly released. And the Society agrees to **INCREASE THE AMOUNT SO PAYABLE**

to --- T W O T H O U S A N D --- Dollars, in event of the Insured's **DEATH FROM ACCIDENT**, as defined in the Double Indemnity provision on the fourth page hereof, subject to the conditions therein set forth, provided such death occurs prior to the maturity of the Endowment. And if the Insured, before the anniversary of the Register date of this policy upon which the Insured's age at nearest birthday is 60 years, becomes **TOTALLY** and presumably **PERMANENTLY DISABLED** as defined in the Total and Permanent Disability provision on the fourth page hereof, the Society will, subject to the conditions of such provision, waive subsequent premiums and pay to the Insured a

DISABILITY INCOME OF --- T E N --- **DOLLARS A MONTH**

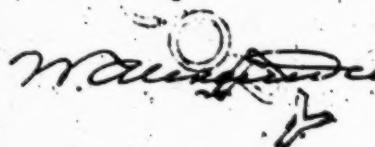
This insurance is granted in consideration of the payment in advance to the Society of

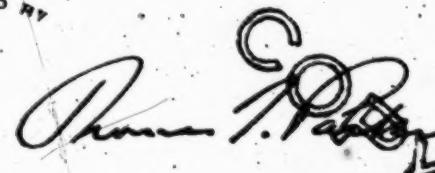
Fifty-six and 99/100 Dollars.
and of the payment annually thereafter of a like sum
day of January upon each first

TWENTY full years' premiums shall have been paid, or until the prior death of the Insured. These payments include a annual premium of \$1.00 for the Double Indemnity and of \$4.08 for the Total and Permanent Disability provision hereof.

THE PROVISIONS of the subsequent pages hereof form a part of this contract as fully as if recited at length over the signatures hereto affixed. This policy is executed at the Home Office of the Society in New York on its date of issue, the Third day of January 1935

EXAMINED BY

 Secretary.

 President.

 Ass't Registrar.

INSURANCE PAYABLE IN 20 YEARS OR PRIOR DEATH. DOUBLE INDEMNITY FOR FATAL ACCIDENT.
TOTAL AND PERMANENT DISABILITY BENEFITS. WAIVER OF PREMIUMS. MONTHLY DISABILITY INCOME.
PREMIUMS PAYABLE FOR 20 YEARS UNLESS DIVIDENDS APPLIED TO SHORTEN PREMIUM PAYING PERIOD.
ANNUAL DIVIDENDS.

2703. 30. 6.
Do. Acc. & Disab.
End.

SECOND PAGE.

(Entries on this page are to be made only by the Society at its Home Office in New York.
No other entries will be recognized.)

CHANGE OF BENEFICIARY REGISTER.

2703. 30, 6.

(2)

SECOND PAGE.

116 B

INCONTESTABILITY AND FREEDOM OF TRAVEL, RESIDENCE AND OCCUPATION.

This policy, except as to the provisions relating to Disability and Double Indemnity, shall be (a) INCONTESTABLE after it has been in force during the lifetime of the Insured for a period of one year from its date of issue, provided premiums have been duly paid, and (b) FREE FROM RESTRICTIONS on travel, residence, occupation or military or naval service.

PARTICIPATION IN DIVIDENDS.

The proportion of divisible surplus accruing upon this policy shall be ascertained annually. At the end of the second and each subsequent policy year any surplus apportioned by the Society to this policy as a Dividend shall, at the option of the Insured, be:

1. Paid in cash; or
2. Applied toward the payment of any premium due on this policy if the remainder of such premium is duly paid; or
3. Applied to the purchase of paid-up Additional Endowment Insurance without Disability or Double Indemnity benefits, and the Insured may at any time (provided the cash value of such Additional Insurance has not been applied to purchase paid-up Endowment or extended term insurance in accordance with the provisions hereof entitled "Options on Surrender or Lapse" set forth on the fifth page hereof) surrender such Additional Insurance and receive the cash value thereof which shall not be less than the original cash Dividend; or
4. Left to accumulate at 3% interest, compounded annually, and if in any year the Society declares that funds held under this Option shall receive interest in excess of 3% per annum the accumulation hereunder shall be increased by an Excess Interest Dividend in an amount to be determined and apportioned by the Society. Any Dividend accumulations under this Option will be payable to the Insured on demand on any anniversary of the Register date of this policy.

If the Insured does not elect one of the foregoing Options within three months after the mailing by the Society of a notice requiring such election, the Dividend shall be applied as provided under Option 3. If the Insured dies after the first policy year and while this policy is in force, such cash dividend as may be apportioned by the Society for the fraction of the then current policy year elapsed before such death will be allowed.

Any Additional Endowment Insurance and any Dividends or accumulations remaining unpaid at the maturity of this policy shall be payable at the same time and in the same manner as the face hereof unless otherwise provided herein.

if the Insured does not elect one of the foregoing, the Society of a notice requiring such election, the Dividend shall be applied as provided under Option 3. If the Insured dies after the first policy year and while this policy is in force, such cash dividend as may be apportioned by the Society for the fraction of the then current policy year elapsed before such death will be allowed.

Any Additional Endowment Insurance and any Dividends or accumulations remaining unpaid at the maturity of this policy shall be payable at the same time and in the same manner as the face hereof unless otherwise provided herein.

CONVERSION TO PAID-UP POLICY. The Society, upon written request and the return of this policy, will convert this policy into a fully paid-up participating Endowment policy to mature at the same date as this policy for the face amount of insurance hereunder, whenever the reserve on this policy and on any dividend additions together with any dividend accumulations equals the net single premium for such paid-up policy (based on the American Experience Table of Mortality with 3% interest at the Insured's attained age) including the single premium required for any Disability and Double Indemnity provisions then in force under this policy which the Insured desires to continue under such paid-up policy. Any indebtedness to the Society existing against this policy will continue as a lien against the paid-up policy.

MATURITY AT EARLIER DATE. Whenever during the lifetime of the Insured the reserve on this policy and on any dividend additions together with any dividend accumulations equals the face amount hereof, the Society, upon surrender of this policy with due release, will regard this policy as a matured Endowment and will pay to the Insured the face amount of insurance hereunder less any indebtedness.

TOTAL AND PERMANENT DISABILITY.

Upon receipt of due proof as hereinafter provided that the Insured, while this policy was in force and no premium hereunder in default, became totally disabled as hereinafter defined due to bodily injury or disease before the anniversary of the Register date of this policy upon which the Insured's age at nearest birthday is 60 years and that such Total Disability has existed continuously for at least four months, the Society will, subject to the conditions set forth below, presume such Total Disability to be permanent and

(a) Waive payment of all premiums upon this policy falling due after the commencement of such Total Disability and during its continuance, except that no premium falling due more than one year prior to receipt at the Home Office of the Society of written notice of claim shall be waived; and

(b) Pay to the Insured for the fourth and each subsequent completed month of such Total Disability during its continuance the monthly Disability Income stated on the first page hereof, provided, however, that no Income shall be payable for any period of Total Disability more than one year prior to receipt at the Home Office of the Society of written notice of claim. The first payment hereunder shall be made upon receipt of such due proof and an additional payment upon the completion of each additional month of such Total Disability during its continuance.

If such proof shows that the Insured has been committed by a Court as an insane person or committed as a ward or patient in an incorporated institution for mental cases or is otherwise incompetent to transact any business or to care for self, and that no legal representative of the Insured's estate has been appointed and qualified, the Society at its election may make any payment hereunder to any beneficiary, named in this policy, as trustee for the Insured. Any payment hereunder due but unpaid at the death of the Insured shall be payable, provided there be no assignee entitled thereto, to the person who at the date of payment is the one designated to receive the first payment on account of the proceeds of this policy, if there be such a person living at said date, or, if there be no such person then living, to the Insured's executors or administrators.

Any premiums so waived and any Disability Income so paid shall not be deducted from any other amount payable in any settlement of this policy. Any dividends which would otherwise have become payable during Total Disability shall be allowed as though Total Disability had not occurred.

DEFINITION. Disability is total when it prevents the Insured from engaging in any occupation for remuneration or profit.

The entire and irrecoverable loss of sight of both eyes, or the severance of both hands at or above the wrists, or of both feet at or above the ankles, or such severance of one entire hand and one entire foot, shall be deemed Total Disability hereunder.

Disability resulting directly or indirectly from military or naval service in time of war or from self-inflicted injury are risks not assumed by the Society under this provision.

NOTICE OF CLAIM. Written notice of claim hereunder must be received at the Home Office of the Society during the lifetime of the Insured and the continuance of such Total Disability. Failure to give notice as herein provided shall not invalidate any Total Disability claim if it shall be shown not to have been reasonably possible to give such notice and that written notice was given as soon as was reasonably possible.

PROOF OF TOTAL DISABILITY. Due proof of such Total Disability must be received at the Home Office of the Society while this policy is in force or before the expiration of one year after default in the payment of premium, or if there be no default not later than one year from the maturity of this policy.

The entire and irrecoverable loss of sight of both eyes, or the severance of both hands at or above the wrists, or of both feet at or above the ankles, or such severance of one entire hand and one entire foot, shall be deemed Total Disability hereunder.

Disability resulting directly or indirectly from military or naval service in time of war or from self-inflicted injury are risks not assumed by the Society under this provision.

NOTICE OF CLAIM. Written notice of claim hereunder must be received at the Home Office of the Society during the lifetime of the Insured and the continuance of such Total Disability. Failure to give notice as herein provided shall not invalidate any Total Disability claim if it shall be shown not to have been reasonably possible to give such notice and that written notice was given as soon as was reasonably possible.

PROOF OF TOTAL DISABILITY. Due proof of such Total Disability must be received at the Home Office of the Society while this policy is in force or before the expiration of one year after default in the payment of premium, or if there be no default not later than one year from the maturity of this policy.

TOTAL DISABILITY COMMENCING DURING GRACE. If due proof furnished as required above shall establish that such Total Disability commenced during the grace of a premium in default, Disability benefits shall be allowed as if such default had not occurred, upon payment of the premium in default with interest thereon at 5% per annum.

RECOVERY FROM TOTAL DISABILITY. The Society shall have the right at any time during the first two years after receipt of such proof, and thereafter once a year, to require proof of the continuance of such Total Disability. If satisfactory proof is not furnished, or if it appears at any time that such Total Disability has terminated, no further premiums will be waived and no further Disability Income payments will be made on account of such Total Disability.

DOUBLE INDEMNITY FOR DEATH FROM ACCIDENT.

Upon receipt of due proof of the Insured's death from accident as defined below, occurring while this policy was in force and no premium hereunder in default, the Society agrees to increase the face amount to the amount stated on the first page hereof.

Death from accident means death resulting solely from bodily injuries caused directly, exclusively and independently of all other causes by external, violent and purely accidental means and ensuing within 90 days of such injuries, but does not include death resulting from or caused directly or indirectly by self-destruction sane or insane, the taking of any poison or the inhaling of any gas, whether voluntary or otherwise, disease or illness of any kind, physical or mental infirmity, military or naval service in time of war, riding as a passenger or otherwise in an airplane or in any other type of aircraft, or by the Insured's violation of any law. The Society, in order to determine whether death resulted from accident, shall, in the absence of legal prohibition, have the right and opportunity to make an autopsy.

Upon any anniversary of the Register date of this policy either or both of the foregoing Disability and Double Indemnity provisions may be discontinued by returning this policy to the Society for proper endorsement, with a written request satisfactory to the Society, and thereafter the payment of the premium for any such discontinued provision shall not be required. In no event shall a premium be charged for the Disability provision on or after the anniversary of such Register date upon which the Insured's age at nearest birthday is 60 years.

PROVISIONS RELATING TO LOANS AND SURRENDER VALUES.

LOANS. After two full years' premiums have been paid, the Society, at any time while this policy is in force, will advance to the Insured, on proper assignment of this policy and on the sole security hereof, at 6% interest per annum payable annually on the premium anniversary date a sum which, with interest for the then current policy year, shall not exceed the cash value as stated in the following table. Interest if not paid when due shall be added to the existing loan and bear interest at the same rate. If the advance is for a purpose other than to pay premiums on policies in the Society, the granting of the same may be deferred by the Society for a period not exceeding ninety days after receipt of application therefor. Failure to repay such advance or to pay interest thereon shall not avoid this policy unless the total indebtedness hereon shall equal the total loan value, nor until thirty-one days after notice shall have been mailed to the Insured, and to the assignee of record, if any, at their addresses last known to the Society.

Such advance may be repaid at any time prior to default in the payment of any premium while this policy is in force.

OPTIONS ON SURRENDER OR LAPSE. Within three months after default in the payment of any premium after two full years' premiums have been paid, the Insured may surrender this policy and elect one of the following Options:

- (a) To receive the cash value of this policy; or
- (b) To purchase non-participating paid-up Endowment insurance payable at the same time and on the same conditions as this policy, but without Disability or Double Indemnity benefits; or
- (c) To continue the insurance as non-participating paid-up extended term insurance for its face amount (and any dividend additions) for the period shown in the opposite table, or for such further period as the dividend additions (if any) will purchase, but without the right to loans, or Disability or Double Indemnity benefits; and if the sum applicable to the purchase of such term insurance shall be more than sufficient to continue the insurance to the end of the endowment period named herein the excess shall be used to purchase a non-participating paid-up pure Endowment payable at the date of the maturity of the Endowment, if the Insured is then living, and on the same conditions as this policy, but without the right to loans, or Disability or Double Indemnity benefits.

TABLE OF LOAN AND SURRENDER VALUES.

After policy has been in force	FOR EACH \$1000 OF FACE AMOUNT.		PAID-UP EX- TENDED TERM INSURANCE, IRRESPECTIVE OF FACE AMOUNT.		PAID-UP PURE ENDOWMENT FOR EACH \$1000 OF FACE AMOUNT OF POLICY.	
	YEARS	CASH VALUE	PAID-UP ENDOWMENT INSURANCE.	YEARS	MOS.	END.
2	\$ 50	3 61	5	10	3 0	
3	893	145	10	10	3 0	
4	133	105	15	3	3 0	20
5	175	165	15	0	3 75	
6	216	217	14	0	3154	
7	262	271	13	0	3236	
8	303	329	12	0	3313	FOR AGE
9	357	384	11	0	3388	
10	407	433	10	0	3459	35
11	456	537	9	0	3524	

(c) To continue the insurance as non-participating paid-up extended term insurance for its face amount (and any dividend additions) for the period shown in the opposite table, or for such further period as the dividend additions (if any) will purchase, but without the right to loans, or Disability or Double Indemnity benefits; and if the sum applicable to the purchase of such term insurance shall be more than sufficient to continue the insurance to the end of the endowment period named herein the excess shall be used to purchase a non-participating paid-up pure Endowment payable at the date of the maturity of the Endowment, if the Insured is then living, and on the same conditions as this policy, but without the right to loans, or Disability or Double Indemnity benefits.

If the Insured does not elect one of said Options within three months after such default, the insurance shall be continued as provided under Option (c).

Any indebtedness against this policy on or after the date of default shall not be repayable in cash, but the cash value shall be reduced by the amount of such indebtedness plus interest thereon, and the paid-up Endowment insurance shall be for such an amount as the reduced cash value will purchase, and the extended term insurance shall be for the face amount of this policy and dividend additions less such indebtedness and interest and, subject to the provisions of Option (c), for such period as the reduced cash value will purchase, not extending beyond the maturity of the Endowment.

The Insured's right to assign, terminate or change this policy shall extend to any paid-up insurance accruing hereunder.

The payment of any cash value under this policy may be deferred by the Society for a period not exceeding ninety days after receipt of application therefor.

BASIS OF COMPUTATION. The RESERVE for which funds are to be held upon this policy shall be computed upon the American Experience Table of Mortality with interest at 3% by the net level premium method.

The values stated in the opposite table are mathematical equivalents and each is equal to the full RESERVE at the end of the then current policy year, on the basis of annual premiums, less a surrender charge of not more than 2% of the face of this policy until the completion of the tenth policy year, at which time and thereafter there is no deduction made as a surrender charge, except that fractions of a month and fractions of a dollar are not allowed.

2	\$ 50	\$ 61	5	10	\$ 0	END.
3	\$ 92	\$ 145	10	10	\$ 0	20
4	\$ 133	\$ 205	15	3	\$ 0	
5	\$ 175	\$ 265	15	0	\$ 75	
6	\$ 216	\$ 317	14	0	\$ 154	
7	\$ 262	\$ 371	13	0	\$ 236	
8	\$ 303	\$ 420	12	0	\$ 313	FOR
9	\$ 357	\$ 481	11	0	\$ 388	AGE
10	\$ 407	\$ 533	10	0	\$ 459	35
11	\$ 456	\$ 597	9	0	\$ 524	
12	\$ 508	\$ 636	8	0	\$ 586	
13	\$ 561	\$ 684	7	0	\$ 646	
14	\$ 616	\$ 731	6	0	\$ 703	
15	\$ 674	\$ 777	5	0	\$ 758	
16	\$ 733	\$ 823	4	0	\$ 811	
17	\$ 796	\$ 868	3	0	\$ 861	
18	\$ 861	\$ 913	2	0	\$ 909	
19	\$ 928	\$ 956	1	0	\$ 956	
20	\$1000	--M A T U R E S--				

The loan value is the cash value less interest to the end of the policy year. The loan obtainable at the end of a given year may be secured during that year if the premium for the entire year has been paid. Due allowance will be made for any fractional premium paid beyond completed policy years.

These values will be increased by the cash value of dividend additions, if any; they will be reduced if there is any indebtedness.

Loan and surrender values for any years not shown in the table will be on the same basis and will be furnished on request.

ASSIGNMENTS. No assignment of this policy shall be binding upon the Society or be deemed to be in force unless in writing and until filed at its Home Office. The Society assumes no responsibility for the validity of any assignment.

BENEFICIARY. If there is no written assignment of this policy in force and on file with the Society or if the only assignment in force and on file is to the Society as security for an advance, the Insured may from time to time, by written notice duly filed at the Society's Home Office, change the beneficiary, but such change shall take effect only upon its endorsement on this policy by the Society.

If the executors or administrators of the Insured be not expressly designated as beneficiary, any part of the proceeds of this policy with respect to which there is no designated beneficiary living at the death of the Insured prior to the maturity of the Endowment and no assignee entitled thereto, will be payable in a single sum to the children of the Insured who survive the Insured, in equal shares, or should none survive, then to the Insured's executors or administrators.

The Insured (or assignee if any) may, without the consent of the beneficiary, surrender, assign or pledge this policy and all rights hereunder or, subject to the Society's approval, change to another form or plan of insurance. An assignment by the Insured shall operate to exclude any and all rights of any beneficiary under this policy except that upon release of all outstanding assignments or upon reassignment to the Insured all rights under this policy shall be the same as if such assignments of said policy had not been made and that if assigned or pledged as collateral only by the Insured any equity remaining at the death of the Insured prior to the maturity of the Endowment shall accrue to the beneficiary.

PAYMENT OF PREMIUMS. All premiums are payable in advance on or before their respective due dates at the Home Office or to any duly authorized Collecting Agent or Cashier of the Society, upon delivery of a receipt signed by the President, a Vice-President, Secretary or Treasurer, and countersigned by said Collecting Agent or Cashier. Subject to the Society's written approval, premiums may be made payable annually, semi-annually or quarterly at the Society's adopted rates for such premiums.

The first policy year under this policy shall begin on the Register date stated on the back of this policy and the second and subsequent policy years shall begin on the respective anniversaries of the Register date.

GRACE. A grace of thirty-one days will be granted for the payment of every premium after the first, during which period the insurance hereunder shall continue in force. No interest will be charged upon premiums paid during the days of grace. If death occur within the days of grace, the premium then due and unpaid shall be deducted from the amount payable hereunder.

LAPSE AND REINSTATEMENT. Failure to pay any premium on or before the day on which it falls due shall constitute a default hereunder. Upon default this policy shall lapse and the insurance herein cease, except as stated in the provisions hereof entitled "Grace" and "Options on Surrender or Lapse," but it may be reinstated at any time unless the cash value has been duly paid or the period of extended term insurance has expired, upon the production of evidence of insurability satisfactory to the Society and the payment of all overdue premiums, with interest at 5% per annum, and upon the payment with interest of the reinstatement of any indebtedness to the Society secured hereby.

AGE. If the age of the Insured has been misstated, any benefits accruing under this policy shall be adjusted

PAYMENT OF PREMIUMS. All premiums are payable in advance on or before their respective due dates at the Home Office or to any duly authorized Collecting Agent or Cashier of the Society, upon delivery of a receipt signed by the President, a Vice-President, Secretary or Treasurer, and countersigned by said Collecting Agent or Cashier. Subject to the Society's written approval, premiums may be made payable annually, semi-annually or quarterly at the Society's adopted rates for such premiums.

The first policy year under this policy shall begin on the Register date stated on the back of this policy and the second and subsequent policy years shall begin on the respective anniversaries of the Register date.

GRACE. A grace of thirty-one days will be granted for the payment of every premium after the first, during which period the insurance hereunder shall continue in force. No interest will be charged upon premiums paid during the days of grace. If death occur within the days of grace, the premium then due and unpaid shall be deducted from the amount payable hereunder.

LAPSE AND REINSTATEMENT. Failure to pay any premium on or before the day on which it falls due shall constitute a default hereunder. Upon default this policy shall lapse and the insurance herein cease, except as stated in the provisions hereof entitled "Grace" and "Options on Surrender or Lapse," but it may be reinstated at any time unless the cash value has been duly paid or the period of extended term insurance has expired, upon the production of evidence of insurability satisfactory to the Society and the payment of all overdue premiums, with interest at 5% per annum, and upon the payment with interest of the reinstatement of any indebtedness to the Society secured hereby.

AGE. If the age of the Insured has been misstated, any benefits accruing under this policy shall be adjusted to correspond to those which would accrue under a similar policy which the premium paid would have purchased at the Society's rates in use at the Register date hereof for the Insured's correct age. The Society will, however, admit the age of the Insured if furnished with due proof thereof, and in that event will issue to the Insured without cost a certificate evidencing such admission.

THE CONTRACT. This policy, and the application therefor, a copy of which is endorsed hereon or securely attached hereto, constitute the entire contract between the parties. All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this policy or be used in defense of a claim hereunder unless contained in the written application therefor and a copy of such application is endorsed hereon or attached hereto, when issued.

SELF-DESTRUCTION. Self-destruction sane or insane, within one year from the date of issue hereof, is a risk not assumed by the Society under this policy. In such an event the Society's liability shall be limited to an amount equal to the premium actually paid.

MODES OF SETTLEMENT AT MATURITY OF POLICY.

In lieu of the lump sum payment provided for on the first page hereof the Insured may elect to have the net sum due hereunder at the maturity of the Endowment or at his prior death applied under one or more of the following optional modes of settlement, or, in the event of the Insured's death prior to the maturity of the Endowment the beneficiary may so elect in the absence of such an election by the Insured.

If the Insured elects to have the amount payable hereunder at the maturity of the Endowment applied in accordance with one of said modes of settlement, he may nominate (with the right to change such nomination) the person who, in the event of the Insured's death after the maturity of the Endowment, shall receive any amount then remaining unpaid.

The Insured's nominee (if the Insured dies after the maturity of the Endowment) or the beneficiary (if the Insured dies before such maturity) may after the Insured's death designate (with the right to change such designation) the person to receive any amount remaining unpaid at the death of such nominee or beneficiary, as the case may be, if there be no such person designated by the Insured and surviving.

Any such election, designation, nomination or request for change shall be in writing and shall not take effect until filed with the Society at its Home Office and endorsed upon the policy or the supplementary contract, if any.

1. **DISCRET OPTION:** Left on deposit with the Society at interest guaranteed at the rate of 3% per annum, with such Excess Interest Dividend as may be apportioned.

2. **INSTALMENT OPTION: FIXED PERIOD.** Paid in a fixed number of equal annual, semi-annual, quarterly or monthly instalments as set forth in the following table.

3. **LIFE INCOME OPTION:** Paid in equal annual, semi-annual, quarterly or monthly instalments for five, ten or twenty years certain as may be elected and continuing during the remaining lifetime of the beneficiary as shown in the following table.

4. **INSTALMENT OPTION: FIXED AMOUNT.** Paid in equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the net sum due under this policy together with interest on the unpaid balances at the rate of 3% per annum, and such Excess Interest Dividends as may be apportioned, shall be exhausted, the final payment to be the balance then remaining with the Society. If the interest and Excess Interest Dividend for any year shall be in excess of the instalments payable in such year, then the total amount of the instalments for the subsequent year shall be increased by the amount of such excess.

EXCESS INTEREST DIVIDEND: The foregoing Options are based upon an interest earning of 3% per annum; but if in any year the Society declares that funds held under such Options shall receive interest in excess of 3% per annum, the interest under Option 1, the amount of instalment under Option 2, the amount of income during the fixed period of five, ten or twenty years under Option 3 and the funds held under Option 4, shall be increased for that year by an Excess Interest Dividend as determined and apportioned by the Society.

TABLE OF INSTALMENTS FOR EACH \$1,000 OF PROCEEDS.

The semi-annual and quarterly instalments are 50.37% and 25.28% respectively of the annual instalment under Option 2, and not less than these respective percentages under Option 3.

OPTION 2			OPTION 3—LIFE INCOME													
Number of Years' Maturity	Monthly Instalment	Annual Instalment	Age of Beneficiary when first instalment is due	5 Years Certain		10 Years Certain		20 Years Certain		Age of Beneficiary when first instalment is due	5 Years Certain		10 Years Certain		20 Years Certain	
				Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment		Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment
2	342.86	3507.39	10 and under	83.81	344.85	33.75	344.21	33.58	342.20	48	85.36	362.61	85.17	360.51	34.60	354.20
3	28.99	343.23	11 under	3.53	45.07	3.77	44.41	3.59	42.36	49	5.45	63.63	5.24	61.40	4.65	54.71
4	22.06	261.19	12	3.85	45.30	3.79	44.82	3.61	42.54	50	5.54	64.70	5.32	62.33	4.69	54.94
5	17.91	211.99	13	3.87	45.54	3.81	44.84	3.62	42.71	51	5.64	65.83	5.41	63.30	4.74	55.77
6	15.14	179.22	14	3.80	45.78	3.83	45.07	3.64	42.90	52	5.74	67.02	5.49	64.30	4.78	56.30
7	13.16	155.83	15	3.91	46.03	3.85	45.29	3.65	43.08	53	5.85	68.26	5.58	65.35	4.83	56.84
8	11.65	138.30	16	3.94	46.27	3.87	45.53	3.67	43.27	54	5.97	69.57	5.68	66.44	4.87	57.37
9	10.53	124.69	17	3.96	46.52	3.89	45.76	3.69	43.47	55	6.09	70.95	5.78	67.57	4.92	57.90
10	9.61	113.81	18	3.98	46.77	3.91	45.99	3.70	43.66	56	6.22	72.40	5.83	68.75	4.96	58.43
11	8.85	104.92	19	4.00	47.02	3.93	46.23	3.72	43.87	57	6.35	73.93	5.98	69.98	5.00	59.95
12	8.24	97.53	20	4.02	47.28	3.95	46.48	3.74	44.07	58	6.49	75.53	6.09	71.24	5.05	59.46
13	7.71	91.20	21	4.05	47.55	3.97	46.74	3.76	44.29	59	6.64	77.22	6.21	72.55	5.09	59.96
14	7.26	85.94	22	4.07	47.84	4.00	47.01	3.78	44.52	60	6.80	78.99	6.32	73.91	5.13	60.45
15	6.87	81.32	23	4.10	48.14	4.02	47.29	3.80	44.75	61	6.96	80.85	6.44	75.31	5.17	60.92
16	6.53	77.29	24	4.12	48.45	4.05	47.59	3.82	45.00	62	7.13	82.81	6.57	76.75	5.20	61.37

OPTION 2

OPTION 3—LIFE INCOME

Number of Years' Instalment	Monthly Instalment	Annual Instalment	Age of Beneficiary when first instalment is due	5 Years Certain			10 Years Certain			20 Years Certain			Age of Beneficiary when first instalment is due	5 Years Certain			10 Years Certain			
				Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment	Monthly Instalment	Annual Instalment									
2	842.86	5507.39	10 and under	53.81	344.85	33.75	344.21	33.58	342.20	48	35.36	262.61	35.17	260.51	34.60	254.20				
3	28.99	343.23	11 under	3.83	45.07	3.77	44.41	3.59	42.36	49	5.45	63.63	5.24	61.40	4.65	54.71				
4	22.06	261.19	12	3.85	45.30	3.79	44.62	3.61	42.54	50	5.54	64.70	5.32	62.33	4.69	55.24				
5	17.91	211.90	13	3.87	45.54	3.81	44.84	3.62	42.71	51	5.64	65.83	5.41	63.30	4.74	55.77				
6	15.14	179.22	14	3.89	45.78	3.83	45.07	3.64	42.90	52	5.74	67.02	5.49	64.30	4.78	56.30				
7	13.16	155.83	15	3.91	46.03	3.85	45.29	3.65	43.08	53	5.85	68.26	5.58	65.35	4.83	56.84				
8	11.68	138.30	16	3.94	46.27	3.87	45.53	3.67	43.27	54	5.97	69.57	5.68	66.44	4.87	57.37				
9	10.53	124.69	17	3.96	46.52	3.89	45.76	3.69	43.47	55	6.09	70.95	5.78	67.57	4.92	57.90				
10	9.61	113.81	18	3.98	46.77	3.91	45.99	3.70	43.66	56	6.22	72.40	5.83	68.75	4.96	58.43				
11	8.86	104.92	19	4.00	47.02	3.93	46.23	3.72	43.87	57	6.35	73.93	5.98	69.98	5.00	58.95				
12	8.24	97.53	20	4.02	47.28	3.95	46.48	3.74	44.07	58	6.49	75.53	6.09	71.24	5.05	59.46				
13	7.71	91.29	21	4.05	47.55	3.97	46.74	3.76	44.29	59	6.64	77.22	6.21	72.55	5.09	59.96				
14	7.26	85.94	22	4.07	47.84	4.00	47.01	3.78	44.52	60	6.80	78.99	6.32	73.91	5.13	60.45				
15	6.87	81.32	23	4.10	48.14	4.02	47.29	3.80	44.75	61	6.96	80.85	6.44	75.31	5.17	60.92				
16	6.53	77.29	24	4.12	48.45	4.05	47.59	3.82	45.00	62	7.13	82.81	6.57	76.75	5.20	61.37				
17	6.23	73.74	25	4.15	48.77	4.07	47.90	3.84	45.25	63	7.31	84.87	6.70	78.23	5.34	61.80				
18	5.96	70.59	26	4.18	49.12	4.10	48.22	3.86	45.51	64	7.51	87.03	6.83	79.75	5.27	62.20				
19	5.73	67.78	27	4.21	49.47	4.13	48.56	3.89	45.79	65	7.71	89.31	6.96	81.30	5.30	62.59				
20	5.51	65.25	28	4.25	49.85	4.16	48.91	3.91	46.07	66	7.92	91.09	7.09	82.89	5.33	62.94				
21	5.32	62.96	29	4.28	50.24	4.19	49.28	3.94	46.37	67	8.14	94.19	7.23	84.50	5.36	63.27				
22	5.15	60.91	30	4.32	50.65	4.23	49.66	3.96	46.67	68	8.37	96.81	7.37	86.14	5.38	63.57				
23	4.99	59.04	31	4.35	51.08	4.26	50.07	3.99	46.99	69	8.61	99.56	7.51	87.79	5.40	63.84				
24	4.84	57.32	32	4.39	51.53	4.30	50.49	4.02	47.32	70	8.86	102.43	7.65	89.46	5.42	64.08				
25	4.71	55.75	33	4.43	52.01	4.33	50.95	4.05	47.66	71	9.13	105.44	7.79	91.12	5.44	64.29				
26	4.59	54.30	34	4.48	52.50	4.37	51.39	4.08	48.01	72	9.40	108.57	7.93	92.79	5.45	64.48				
27	4.47	52.07	35	4.52	53.02	4.42	51.87	4.11	48.38	73	9.69	111.84	8.07	94.44	5.47	64.64				
28	4.37	51.74	36	4.57	53.56	4.46	52.38	4.14	48.75	74	9.99	115.25	8.21	96.06	5.48	64.77				
29	4.27	50.50	37	4.62	54.13	4.51	52.90	4.17	49.14	75	10.30	118.78	8.34	97.65	5.48	64.88				
30	4.18	49.53	38	4.67	54.73	4.55	53.45	4.21	49.54	76	10.62	122.44	8.47	99.21	5.49	64.97				
		39	4.73	55.36	4.60	54.03	4.24	49.96	77	10.93	126.22	8.59	100.71	5.50	65.05					
40		4.78	56.02	4.65	54.63	4.28	50.38	78	11.29	130.13	8.71	102.14	5.50	65.11						
41		4.84	56.71	4.71	55.26	4.32	50.82	79	11.64	134.14	8.82	103.51	5.50	65.15						
42		4.91	57.43	4.77	55.91	4.35	51.27	80	12.00	138.25	8.92	104.80	5.51	65.19						
43		4.97	58.19	4.83	56.60	4.39	51.73	81	12.36	142.44	9.02	106.01	5.51	65.21						
44		5.04	58.90	4.89	57.31	4.43	52.20	82	12.73	146.70	9.11	107.12	5.51	65.23						
45		5.12	59.63	4.95	58.06	4.48	52.69	83	13.09	151.00	9.19	108.14	5.51	65.24						
46		5.19	60.71	5.02	58.84	4.52	53.18	84	13.46	155.34	9.26	109.06	5.51	65.25						
47		5.27	61.64	5.09	59.66	4.56	53.68	85	13.83	159.67	9.32	109.89	5.51	65.25						

If the fractional year's instalments under Options 2, 3 or 4 or interest payments under Option 1 together with similar payments from any other policy or policies of this Society on the life of the Insured and payable to the same payee on the same dates would amount to less than Ten dollars each, the Society reserves the right to pay annually, or in such manner that the fractional payments shall amount to at least Ten dollars each.

No option of settlement elected by the Insured hereunder can be changed nor can any payment thereunder be commuted, except by the Insured's written order filed with the Society at its Home Office.

Under Options 2, 3 and 4, the first instalment will be due at maturity of the Endowment or upon receipt of due proof of prior death. If Option 3 be elected the Society will require

satisfactory evidence of the age of the person upon whose life the Life Income depends. After the expiration of the period certain, instalments under Option 3 will continue during the lifetime of such person, terminating with the last instalment due prior to the death of such person.

The Society will make each payment under the above Options by check which will require the personal endorsement of the payee as proof of survival. If any such payment depends upon the survival of any person other than the payee, satisfactory proof of due survival of such other person must be furnished the Society at the time of such payment.

Options 1, 3 and 4 shall be available to the beneficiary only if there is a personal beneficiary, i. e., other than a corporation, firm, trustee, etc.

IT IS NOT NECESSARY TO EMPLOY ANY PERSON, FIRM, OR CORPORATION TO COLLECT THE INSURANCE OR SECURE ANY BENEFIT UNDER THIS POLICY.



WRITE DIRECT TO
THE EQUITABLE LIFE
ASSURANCE SOCIETY
OF THE UNITED
STATES, 383 SEVENTH
AVENUE, NEW YORK,
OR COMMUNICATE
WITH THE NEAREST
AUTHORIZED AGENT
OF THE SOCIETY,
WHOSE DUTY IT IS
TO FACILITATE ALL
SETTLEMENTS WITH-
OUT CHARGE.

THE EQUITABLE LIFE ASSURANCE SOCIETY

20 -YEAR ENFORCEMENT POLICY.

No. 320133

JOHN DOK

FACE AMOUNT \$1,000

AGE

Annual PREMIUM \$ 56.99

ECIMEN

Reg'd. date: January 21, 1933

Answers possible in 30 seconds or at most 1 min.

Despite its many fine local positions

Total and Personnel Stability Benefits:

Premises payable for 20 years unless dividends applied to shares premium paying period.

Series AD71 Aa5 D14

Stipulation Exhibit D.

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MODES OF SETTLEMENT AT MATURITY OF POLICY.

The Insured may elect to have the net sum due under this policy upon its maturity applied under one or more of the following optional modes of settlement in lieu of the lump sum provided for on the first page hereof, and in the absence of such an election by the Insured, the beneficiary, after the Insured's death, may so elect. The beneficiary, after the Insured's death, may designate (with the right to change such designation) the person to whom any amount remaining unpaid at the death of the beneficiary shall be paid if there be no such person designated by the Insured and surviving. Such election, designation or request for change shall be in writing and shall not take effect until filed with the Society at its Home Office and endorsed upon the policy or the supplementary contract, if any.

1. DIVIDEND OPTION:

Left on deposit with the Society at interest guaranteed at the rate of 3% per annum, with such Excess Interest Dividend as may be apportioned.

**2. INSTALMENT OPTION:
Fixed Period.**

Paid in a fixed number of equal annual, semi-annual, quarterly or monthly instalments as set forth in the following table.

3. LIFE INCOME OPTION:

Paid in equal annual, semi-annual, quarterly or monthly instalments for five, ten or twenty years certain as may be elected and continuing during the remaining lifetime of the beneficiary as shown in the following table.

**4. INSTALMENT OPTION:
Fixed Amount.**

Paid in equal annual, semi-annual, quarterly or monthly instalments of such amount as may be agreed upon until the net sum due under this policy together with interest on the unpaid balances at the rate of 3% per annum, and such Excess Interest Dividends as may be apportioned, shall be exhausted, the final payment to be the balance then remaining with the Society. If the interest and Excess Interest Dividend for any year shall be in excess of the instalments payable in such year, then the total amount of the instalments for the subsequent year shall be increased by the amount of such excess.

Excess Interest Dividends: The foregoing Options are based upon an interest earning of 3% per annum; but if in any year the Society declares that funds held under such Options shall receive interest in excess of 3% per annum, the interest under Option 1, the amount of instalment under Option 2, the amount of income during the fixed period of five, ten or twenty years under Option 3 and the funds held under Option 4, shall be increased for that year by an Excess Interest Dividend as determined and apportioned by the Society.

TABLE OF INSTALMENTS FOR EACH \$1,000 OF PROCEEDS.

The semi-annual and quarterly instalments are 50.37% and 25.39% respectively of the annual instalment under Option 2, and not less than these respective percentages under Option 3.

OPTION 2			OPTION 3—LIFE INCOME													
			Age of Insured at Death		8 Years Certain		10 Years Certain		20 Years Certain		Age of Insured at Death		8 Years Certain		10 Years Certain	
Years to Maturity	Months to Maturity	Years to Maturity	Monthly Instal- ment	Annual Instal- ment	Monthly Instal- ment	Annual Instal- ment	Monthly Instal- ment	Annual Instal- ment	Years to Maturity	Months to Maturity	Years to Maturity	Monthly Instal- ment	Annual Instal- ment	Monthly Instal- ment	Annual Instal- ment	
2	622.50	307.50	20	20	20	20	20	20	20	622.50	307.50	20	20	20	20	20
3	22.50	22.50	21	21	21	21	21	21	21	22.50	22.50	21	21	21	21	21
4	22.50	22.50	22	22	22	22	22	22	22	22.50	22.50	22	22	22	22	22
5	17.50	211.50	22	22	22	22	22	22	22	17.50	211.50	22	22	22	22	22
6	15.14	279.22	22	22	22	22	22	22	22	15.14	279.22	22	22	22	22	22
7	13.18	125.00	22	22	22	22	22	22	22	13.18	125.00	22	22	22	22	22
8	11.00	125.00	22	22	22	22	22	22	22	11.00	125.00	22	22	22	22	22
9	20.50	224.00	27	27	27	27	27	27	27	20.50	224.00	27	27	27	27	27
10	9.61	212.50	25	25	25	25	25	25	25	9.61	212.50	25	25	25	25	25
11	8.38	204.00	25	25	25	25	25	25	25	8.38	204.00	25	25	25	25	25
			4.00	4.00	4.00	4.00	4.00	4.00	4.00							

Age of Insured	Annual Premium	Term of Insurance	5 Years Certain		10 Years Certain		20 Years Certain		Term of Insurance		5 Years Certain		10 Years Certain		20 Years Certain	
			Monthly Premium	Annual Instalment	Monthly Premium	Annual Instalment	Monthly Premium	Annual Instalment	Monthly Premium	Annual Instalment	Monthly Premium	Annual Instalment	Monthly Premium	Annual Instalment	Monthly Premium	Annual Instalment
2	26.00	100.00	10 and 11	2.51	344.25	2.75	344.21	3.55	342.20	45	25.26	302.51	35.17	300.51	34.60	304.20
3	26.00	300.00	11	3.55	45.07	3.77	44.41	3.59	42.36	49	5.45	68.68	5.24	61.40	4.65	54.71
4	26.00	300.00	12	3.55	45.07	3.79	44.62	3.61	42.54	59	5.54	64.70	5.32	62.33	4.60	55.24
5	27.00	311.00	13	3.57	45.54	3.81	44.94	3.63	42.71	51	5.64	65.53	5.41	63.30	4.74	55.77
6	28.00	319.20	14+	3.59	45.78	3.83	45.07	3.64	42.90	52	5.74	67.02	5.49	64.30	4.78	56.30
7	28.50	325.00	15	3.91	46.08	3.85	45.20	3.65	43.08	53	5.85	68.26	5.58	65.26	4.82	56.84
8	31.00	330.00	16	3.94	46.37	3.87	45.53	3.67	43.27	54	5.97	69.57	5.68	66.44	4.87	57.37
9	32.50	324.00	17	3.95	46.53	3.90	45.76	3.69	43.47	55	6.09	70.95	5.73	67.57	4.92	57.90
10	34.00	312.00	18	3.98	46.77	3.91	45.90	3.70	43.66	56	6.22	72.40	5.82	68.75	4.98	58.43
11	34.50	304.00	19	4.00	47.02	3.98	46.23	3.72	43.87	57	6.35	73.95	5.93	69.98	5.00	58.96
12	36.00	37.00	20	4.02	47.28	3.95	46.48	3.74	44.07	58	6.49	75.53	6.08	71.94	5.05	59.46
13	37.71	34.71	21	4.05	47.55	3.97	46.74	3.76	44.29	59	6.64	77.22	6.21	72.55	5.09	59.96
14	37.79	35.24	22	4.07	47.84	4.00	47.01	3.78	44.53	60	6.80	78.90	6.33	73.91	5.13	60.46
15	38.57	35.71	23	4.10	48.14	4.03	47.29	3.80	44.76	61	6.96	80.36	6.44	75.31	5.17	60.92
16	38.59	37.28	24	4.13	48.45	4.06	47.59	3.82	45.00	62	7.13	82.81	6.57	76.75	5.20	61.47
17	40.00	38.74	25	4.15	48.77	4.07	47.90	3.84	45.25	63	7.31	84.87	6.70	78.23	5.24	61.80
18	40.50	39.50	26	4.18	49.12	4.10	48.22	3.86	45.51	64	7.51	87.03	6.83	79.75	5.27	62.20
19	41.75	40.75	27	4.21	49.47	4.13	48.50	3.89	45.79	65	7.71	89.31	6.96	81.30	5.30	62.59
20	42.51	42.25	28	4.25	49.75	4.15	48.91	3.91	46.07	66	7.92	91.00	7.09	82.89	5.33	63.04
21	43.50	43.90	29	4.28	50.24	4.19	49.30	3.94	46.37	67	8.14	94.10	7.23	84.50	5.36	63.27
22	45.15	45.91	30	4.22	50.65	4.23	49.66	3.96	46.67	68	8.37	96.81	7.37	86.14	5.38	63.57
23	46.00	46.04	31	4.26	51.08	4.26	50.07	3.99	46.98	69	8.61	98.56	7.51	87.70	5.40	63.94
24	46.04	47.21	32	4.29	51.53	4.30	50.40	4.02	47.32	70	8.85	102.42	7.65	90.46	5.42	64.08
25	47.71	48.75	33	4.43	52.01	4.33	50.98	4.06	47.66	71	9.13	106.44	7.79	91.12	5.46	64.20
26	48.40	48.30	34	4.45	52.50	4.37	51.30	4.08	48.01	72	9.40	108.57	7.93	92.79	5.45	64.48
27	49.47	49.97	35	4.45	53.03	4.42	51.87	4.11	48.38	73	9.69	111.84	8.07	94.44	5.47	64.64
28	49.57	51.74	36	4.47	53.56	4.46	52.28	4.14	48.75	74	9.99	115.25	8.21	96.06	5.48	64.77
29	49.57	50.50	37	4.62	54.13	4.51	53.90	4.17	49.14	75	10.30	118.75	8.34	97.65	5.48	64.88
30	49.18	49.50	38	4.67	54.73	4.55	54.45	4.21	49.54	76	10.62	122.44	8.47	99.21	5.49	64.97
			49	4.73	55.36	4.60	54.08	4.24	49.98	77	10.95	126.22	8.59	100.71	5.50	65.05
			50	4.75	55.03	4.65	54.63	4.28	50.38	78	11.20	130.13	8.71	103.14	5.50	65.11
			51	4.94	55.71	4.71	55.25	4.32	50.92	79	11.64	134.14	8.82	103.51	5.50	65.15
			52	4.91	57.43	4.77	55.91	4.35	51.27	80	12.00	138.25	8.92	104.80	5.51	65.19
			53	4.97	55.19	4.83	56.60	4.39	51.73	81	12.36	142.44	9.02	106.01	5.51	65.21
			54	5.04	55.90	4.90	57.31	4.43	52.20	82	12.73	146.70	9.11	107.12	5.51	65.23
			55	5.12	55.53	4.96	58.06	4.48	52.89	83	13.00	151.00	9.19	108.14	5.51	65.24
			56	5.19	55.71	5.02	58.94	4.52	53.18	84	13.46	155.24	9.26	109.05	5.51	65.25
			57	5.37	61.04	5.09	59.66	4.56	53.98	85	13.83	159.67	9.32	109.80	5.51	65.25

If the fractional year's instalments under Options 2, 3 or 4 or interest payments under Option 1 together with similar payments from any other policy or policies of this Society on the life of the insured and payable to the same beneficiary on the same dates would amount to less than Ten dollars each, the Society reserves the right to pay annually, or in such manner that the fractional payments shall amount to at least Ten dollars each.

No option of settlement elected by the Insured hereunder can be changed nor can any payment thereunder be commuted, except by the Insured's written order filed with the Society at its Home Office.

Under Options 2, 3 and 4, the first instalment will be due upon receipt of due proof of death. If Option 3 be elected the Society

will require satisfactory evidence of the age of the person upon whose life the Life Income depends. After the expiration of the period certain, instalments under Option 3 will continue during the lifetime of such person, terminating with the last instalment due prior to the death of such person.

The Society will make each payment under the above Options by check which will require the personal endorsement of the payee as proof of survival. If any such payment depends upon the survival of any person other than the payee, satisfactory proof of due survival of such other person must be furnished the Society at the time of such payment.

Options 1, 3 and 4 shall be available only if there is a personal beneficiary, i. e., other than a corporation, firm, trustee, etc.

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UNITED STATES BOARD OF TAX APPEALS

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THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner,

against

Docket Nos.

89294 and

93805

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Motion.

356

COMES now the respondent, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and moves the Board that the attached Supplementary Stipulation of Facts be received and filed as a part of the evidence in the above-entitled cases, pursuant to leave granted July 7, 1939.

(Signed) J. P. WENCHEL.

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

OF COUNSEL:

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E. O. HANSON, Division Counsel,
T. H. LEWIS, Special Attorney,
Bureau of Internal Revenue.

GRANTED
Aug. 10, 1939

(Signed) CHARLES P. SMITH,
Member.
U. S. Board Tax Appeals.

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UNITED STATES BOARD OF TAX APPEALS

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No.

89294

Docket No.

93805

359

Supplementary Stipulation of Facts.

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that the following facts shall be taken as true, and that for all purposes the following paragraphs shall be considered as having constituted a part of the Stipulation of Facts when the document was filed. (The following paragraphs are numbered to correspond respectively with the numbers of paragraphs in the earlier stipulation which cover related matters.)

III—A

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No part of the taxes and interest paid by the petitioner as stated in paragraph III (of the Stipulation of Facts) has been refunded.

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XXXI-A

The petitioner's liability under its Supplementary Contracts Not Involving Life Contingencies named "Present Value of Amounts Not Yet Due on Supplementary Contracts Not Involving Life Contingencies" carried on its books as stated in paragraph XXXI (of the Stipulation of Facts) was an amount which, if maintained with annual interest increments, would exactly equal petitioner's obligations under such contracts in respect of amounts not yet due at the time of valuation.

Supplementary Stipulation of Facts.

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XXXI-B

Of the mean of the "Present Value of Amounts Not Yet Due on Supplementary Contracts Not Involving Life Contingencies" held by the petitioner at the beginning and end of each of the taxable years, the following percentages were the present values of amounts not yet due under the different options set out in Stipulation Exhibit D exercised as indicated:

		1933	1934	
Option 1 exercised by insured		27.52%	28.20%	
" 2 "	" "	15.36%	14.10%	362
" 4 "	" "	5.12%	4.70%	
" 1 "	" beneficiary	42.99%	44.52%	
" 2 "	" "	6.76%	6.36%	
" 4 "	" "	2.25%	2.12%	
Total		100.00%	100.00%	

XXXII-A

The "guaranteed interest" which was paid by the petitioner in the year it accrued on petitioner's Supplementary Contracts Not Involving Life Contingencies, accrued and was paid as follows under the different options set out in Stipulation Exhibit D, exercised as indicated:

		1933	1934	
Option 1 exercised by insured		\$307,007	\$372,894	
" 2 "	" "	173,983	188,402	
" 4 "	" "	57,994	62,801	
" 1 "	" beneficiary	480,191	583,244	
" 2 "	" "	74,564	80,744	
" 4 "	" "	24,855	26,915	
Total		\$1,118,594	\$1,315,000	

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XXXIV-A

The "guaranteed interest" which had accrued in prior years on petitioner's Supplementary Contracts Not Involving Life Contingencies and which was paid by petitioner during the taxable years here involved, was all paid under option 1 the provisions of which are set forth in Stipulation Exhibit D.

XXXVII-A

The excess interest dividends paid by the petitioner on its Supplementary Contracts Not Involving Life Contingencies, accrued and were paid as follows under the different options set out in Stipulation Exhibit D, exercised as indicated:

		1933	1934
Option 1 exercised by insured		\$147,201.05	\$153,820.84
" 2 "	" "	82,158.73	76,910.41
" 4 "	" "	27,386.24	25,636.80
" 1 "	" beneficiary	229,930.32	242,840.53
" 2 "	" "	36,158.40	34,691.51
" 4 "	" "	12,052.80	11,563.84
Total		\$534,887.54	\$545,463.93

(Signed) CAMPBELL E. LOCKE
 CAMPBELL E. LOCKE,
 Counsel for Petitioner.

(Signed) J. P. WENCHEL (EOH)
 J. P. WENCHEL,
 Chief Counsel,
 Bureau of Internal Revenue.

Dated, August 3, 1939.

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UNITED STATES CIRCUIT COURT OF APPEALS
SECOND CIRCUIT

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,
Petitioner on Review,
vs.
GUT T. HELVERING, Commissioner of
Internal Revenue,
Respondent on Review.

Docket No.
89294

368

Praecipe for Record.

To the Clerk of the United States
Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit copies, duly certified as correct, of the following documents and records in the above entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Second Circuit heretofore filed by The Equitable Life Assurance Society of the United States, the petitioner on review:

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1. Docket entries of the proceedings before the Board;
2. Pleadings before the Board,
 - (a) Petition, including annexed copy of deficiency letter;
 - (b) Answer to petition;
 - (c) Amended answer to petition;
 - (d) Amendment of petition;

Praecipe for Record.

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(e) Second amended answer to petition and answer to amendment of petition;

(f) Reply to amended answer and to second amended answer;

(g) Motion granted August 21, 1939, for leave to file as of date of hearing (May 26, 1939) amendments of petition as theretofore amended;

(h) Amendments of petition as theretofore amended;

(i) Motion granted August 21, 1939, for leave to file as of date of hearing (May 26, 1939), amendment of reply to amended answer and to second amended answer;

(j) Amendment of reply to amended answer and to second amended answer;

(k) Motion granted August 21, 1939, for leave to file answer to amendments of petition as theretofore amended and that the same stand as filed as supplements to the second amended answer to petition and answer to amendment of petition;

(l) Answer to amendments of petition as theretofore amended (dated, July, 1939);

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3. Opinion and decision of the Board;

4. Petition for review, together with proof of service of notice of filing of petition for review and of service of a copy of the petition for review;

5. Extracts from stipulation of facts filed by the parties as evidence in the cause, including paragraphs numbered I to VI, inclusive, and paragraphs numbered XXXI to XXXVII, inclusive, together with exhibits attached thereto, marked "Stipulation Exhibit A" and "Stipulation Exhibit D", but omitting other paragraphs and exhibits;

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Praeclipe for Record.

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6. Motion granted August 10, 1939, that the supplementary stipulation of facts be received and filed as part of the [125] evidence in the case.

7. Extracts from supplementary stipulation of facts filed by the parties as additional evidence in the cause, including paragraphs numbered III-A, XXXI-A, XXXI-B, XXXII-A, XXXIV-A and XXXVII-A, but omitting other paragraphs;

8. All orders extending and enlarging the time for the transmission and delivery of the record herein not included in the record; (not included in record) 374

9. This praecipe.

Dated: November 17, 1941.

CAMPBELL E. LOCKE,
Attorney for Petitioner on Review,

120 Broadway,
New York, N. Y.

Service of a copy of the foregoing
praeclipe is hereby admitted this
19th day of November, 1941. 375

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

UNITED STATES BOARD OF TAX APPEALS
WASHINGTON

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES,

Petitioner,
against

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No.
89294

Certificate.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 125, inclusive, contained and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeclipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 2d day of December, 1941.

B. D. GAMBLE,
Clerk,

United States Board of Tax Appeals.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,
PETITIONER-APPELLANT

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE

Consent for the substitution of attorneys

We hereby consent that John L. Grant, of 393 Seventh Avenue, City, County, and State of New York, be substituted in the place and stead of the undersigned Campbell Locke, as attorney for the petitioner-appellant in the above-entitled proceeding, and that an order to that effect may be entered without further notice.

Dated March 4, 1943.

CAMPBELL LOCKE,

Attorney for Petitioner-Appellant,

120 Broadway, New York, N. Y.

THE EQUITABLE LIFE ASSURANCE

SOCIETY OF THE UNITED STATES,

By ALEXANDER MCNEILL, Secretary.

STATE OF NEW YORK,

City of New York, County of New York, ss:

On this 4th day of March 1943, before me personally came Alexander McNeill, to me known, who, being by me duly sworn, did depose and say that he resides at 17 Garden Street, Great Neck, Long Island, New York; that he is the Secretary of The Equitable Life Assurance Society of the United States, the corporation described in, and which executed, the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

HENRY M. ENSOR,

Notary Public.

Notary Public, Richmond County. Cert. filed in N. Y. Co. No. 318, Reg. No. 4-E-175. Commission expires March 30, 1944.

At a stated term of the United States Circuit Court of Appeals for the Second Circuit, held at the United States Court House in the City of New York on the 8th day of March 1943.

Present: The Equitable Life Assurance Society of the United States, Petitioner-Appellant vs. Guy T. Helvering, Commissioner of Internal Revenue, Respondent-Appellee.

On reading and filing the annexed consent of Campbell Locke, Attorney for the petitioner-appellant, and of The Equitable Life Assurance Society of the United States, petitioner-appellant, in the above-entitled proceeding, and on motion of Campbell Locke, Attorney for the petitioner-appellant, it is

Ordered, that John L. Grant be, and he hereby is, substituted in the place of Campbell Locke, attorney for the petitioner-appellant in the above-entitled proceeding.

Enter:

D. E. ROBERTS, Clerk.

United States Circuit Court of Appeals for the Second Circuit

No. 4—October Term, 1942

(Argued March 11, 1943—Decided July 26, 1943)

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,
PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT

Petition by The Equitable Life Assurance Society of the United States for a review of a decision of the Tax Court determining that the petitioner overpaid its income taxes for the year 1933 by \$40,175.79, instead of \$182,168.23, as claimed by the taxpayer. Modified.

Before L. HAND, AUGUSTUS N. HAND, and FRANK, Circuit Judges.

Campbell Locke, Attorney for petitioner-appellant; James D. Ewing and John L. Grant, Counsel. Samuel O. Clark, Jr., Assistant Attorney General, for Commissioner of Internal Revenue. Respondent-Appellee; Sewall Key, J. Louis Monarch, and L. W. Post, Special Assistants to the Attorney General, Counsel.

AUGUSTUS N. HAND, Circuit Judge:

The question raised by the petition of the taxpayer, Equitable Life Assurance Society, is whether the Tax Court in determining that the taxpayer overpaid its income tax for 1933 by

\$40,175.79 failed to allow various deductions which would have resulted in a determination of a claimed overpayment of \$182.168.23.

The taxpayer is a mutual life insurance company engaged in the business of issuing life insurance and annuity contracts, transacting that business in every state except Texas. More than 50% of its total reserve funds have been held for fulfillment of its life insurance and annuity contracts.

During and prior to the year 1933 the taxpayer issued life insurance policies which gave to the insured and in some cases to the beneficiary, the right to require it to hold the face amount of policies after the date upon which they would otherwise be payable, supplement these amounts with annual increments of interest, and pay out the increased amounts in installments over varying periods of time. The contracts which evidence the exercise of such options under these provisions are known as "Supplementary Contracts," the form of which appears below.¹ When the payments to be made under these contracts are not affected by a life contingency (contracts arising from the exercise of options 1, 2, and 4) they are known as supplementary contracts not involving life contingencies and are thus referred to in the stipulation appearing in the record.

MODES OF SETTLEMENT AT MATURITY OF POLICY

The Insured may elect to have the net sum due under this policy upon its maturity applied under one or more of the following optional modes of settlement in lieu of the lump sum provided for on the first page hereof, and in the absence of such an election by the Insured, the beneficiary, after the Insured's death, may so elect. The beneficiary, after the Insured's death, may designate (with the right to change such designation) the person to whom any amount remaining unpaid at the death of the beneficiary shall be paid if there be no such person designated by the Insured and surviving. Such election, designation, or request for change shall be in writing and shall not take effect until filed with the Society at its Home Office and endorsed upon the policy or the supplementary contract, if any.

1. Deposit Option: Left on deposit with the Society at interest guaranteed at the rate of 3% per annum, with such Excess Interest Dividend as may be apportioned.

2. Instalment Option: Fixed Period.—Paid in a fixed number of equal annual, semi-annual, quarterly, or monthly installments as set forth in the following table.

3. Life Income: Option.—Paid in equal annual, semi-annual, quarterly or monthly installments for five, ten, or twenty years certain as may be elected and continuing during the remaining lifetime of the beneficiary as shown in the following table.

4. Installment Option: Fixed Amount.—Paid in equal annual, semi-annual, quarterly, or monthly installments of such amount as may be agreed upon until the net sum due under this policy together with interest on the unpaid balances at the rate of 3% per annum, and such Excess Interest Dividends as may be apportioned, shall be exhausted, the final payment to be the balance then remaining with the Society. If the interest and excess interest dividend for any year shall be in excess of the installments payable in such year, then the total amount of the installments for the subsequent year shall be increased by the amount of such excess.

Excess Interest Dividend: The foregoing Options are based upon an interest earning of 3% per annum; but if in any year the Society declares that funds held under such Options shall receive interest in excess of 3% per annum, the interest under Option 1, the amount of installments under Option 2, the amount of income during the fixed period of five, ten, or twenty years under Option 3 and the funds held under Option 4, shall be increased for that year by an Excess Interest Dividend as determined and apportioned by the Society.

No option of settlement elected by the Insured hereunder can be changed nor can any payment thereunder be commuted, except by the Insured's written order filed with the Society at its Home Office.

Under Options 2, 3, and 4, the first instalment will be due upon receipt of due proof of death.

The Tax Court held that these "Supplementary Contract Reserves" were not "reserve funds required by law" within the meaning of Section 203 (a) (2) of the Revenue Act of 1932,² inasmuch as they represented assets retained to meet the company's liabilities upon insurance policies which had already matured, and not assets held against unmatured policies. The supplementary contracts provided for interest at a guaranteed rate of 3% per annum. They also provided that in any year when the taxpayer declared that funds held thereunder should receive interest in excess of 3%, the payment should be increased for that year by an excess interest dividend as determined and apportioned by the Society.

The Tax Court allowed the taxpayer to deduct these 3% payments in computing its income tax for the years 1933 and 1934 when the options were exercised by beneficiaries but, on the authority of *Penn Mutual Life Insurance Co. v. Commissioner*, 92 F. (2d) 962 (C. C. A. 3), did not allow the deduction when the option was exercised by the insured.

The foregoing allowance of a deduction of 3 per cent was on the theory that, while Section 203 (a) (2) did not apply because the reserve funds were for Supplementary Contracts not Involving Life Contingencies, nevertheless Subdivision (8) of Section (a)³ was applicable in so far as it related to interest paid on supplementary contracts covered by options exercised by the beneficiary. But the Tax Court refused to allow, under Subdivision (8), the deduction of the 3 per cent guaranteed interest where the insured had exercised the option, and of so-called "excess interest dividends" paid in addition to the guaranteed 3 per cent under resolutions of the Board of Directors, on the ground that they were not interest and hence not deductible under Subdivision (8).

The taxpayer claims the deduction of 3½ per cent of the mean of the reserve funds held at the beginning and end of 1933 and 1934 because of the literal words of Section 203

² SEC. 203. NET INCOME OF LIFE INSURANCE COMPANIES.

(a) General Rule.—In the case of a life insurance company the term "net income" means the gross income less

Reserve Funds.—An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3% per centum shall be substituted for 4 per centum. Life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3½ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only.

³ (8). Interest.—All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities * * * the interest upon which is wholly exempt from taxation under this title.

(a), the former Regulations of the Treasury Department,⁴ which had for thirteen years expressly permitted the deduction, and long settled practice thereunder, but in *Helvering v. Inter-Mountain Life Ins. Co.*, 294 U. S. 686, 690, the Supreme Court determined that assets reserved by an insurance company against matured, unsurrendered and unpaid coupons attached to its 20-payment life non-participating policies were not "reserve funds required by law" within the meaning of Section 245 (a) (2) of the Revenue Act of 1921 (of which Section 203 (a), (2) of the Act of 1932 is a reenactment) allowing deduction of a percentage of the mean of such reserve funds in computing the net income of life insurance companies. The Treasury thereupon changed the Regulation.⁵ Justice Butler, who wrote the opinion, said (at p. 690):

"As the Act does not permit corporations other than insurance companies to make deductions of the kind here under consideration, 'reserve funds' may not reasonably be deemed to include values that do not directly pertain to insurance."

In the later decision of *Helvering v. Illinois Ins. Co.*, 299 U. S. 88, Justice Butler, citing *Helvering v. Inter-Mountain Life Ins. Co.*, 294 U. S. 686, repeating the court's former view as to the limited scope of the deduction allowed under Section 203 (a) (2) said:

"The phrase 'required by law' includes only reserves that directly pertain to life insurance. Other reserves, even though required by state statutes regulatory of the business authorized to be carried on by life insurance companies, are not included. Under these policies the company's liabilities on account of the investment funds are independent of those attributable to life insurance risks. The right to participate in the investment funds is not dependent upon death of the insured."

In *Helvering v. Oregon Ins. Co.*, 311 U. S. 267, the Supreme Court again dealt with the types of "reserve funds required by law" which are deductible by life insurance companies under Section 203 (a) (2). It adverted to the fact that it had theretofore held in the *Inter-Mountain Life Insurance* case that "reserves set aside by life insurance companies to protect payment of policy investment purchases cannot be used as the basis for deductions." In *Helvering v. Oregon Ins. Co.* we find no indication of a purpose to depart from the views expressed by Justice Butler in the earlier decisions we have mentioned.

While it may be argued with some plausibility that there is little basis for distinguishing between the investment and the

⁴ Treasury Reg. 62, Art. 681 (1921 Act).
⁵ T. D. 4815, XIV, 2 C. B. 310 (1935).

insurance features of such policies as we are dealing with and that every payment to an insurance company has both contingent and investment features, we think the Supreme Court holds that Congress has not given the privilege of deduction to values that have as little relation to contingencies of life insurance as those involved in the Supplementary Contract Reserves under consideration. The reserves here were carried to provide for the payment of matured life insurance policies and not to meet life contingencies. If we are right in supposing that the foregoing represents the holding of the Supreme Court even where the earlier Regulations of the Treasury Department allowed such deductions as are claimed here, it is unnecessary to discuss Regulations 77 promulgated by the Treasury under the Revenue Act of 1932, Art. 971.

Because of the foregoing considerations we think that the Tax Court was right in holding that Section 203 (a) does not allow the deduction claimed. We also think it was right in allowing the deduction of 3 percent interest paid under settlement options exercised by the beneficiaries; but, we think it should also have allowed deductions where the options were exercised by the insured. In disallowing deductions in such cases it relied on *Penn Mut. Life Ins. Co. v. Commissioner*, 92 F. (2d) 962. There the Court of Appeals for the Third Circuit disallowed the deductions on the ground that the obligation to pay was not due. With all proper respect for the decision in *Penn Mut. Life Ins. Co. v. Commissioner*, *supra*, we are not persuaded that it should make any difference whether the insured or the beneficiary has exercised the option. Upon the death of the policyholder the company became a debtor of the beneficiary in the face amount of the policy, and the additional payments were interest paid or accrued within the taxable year on an indebtedness of the company even though the due date of the indebtedness may be have been postponed by the insured. We, therefore, hold that the decision of the Tax Court should be modified so as to allow the deduction of the guaranteed interest whether the options were exercised by the insured or the beneficiary.

Last of all, the taxpayer contends that the excess interest payments in 1933 and 1934 were improperly disallowed and that they ought to have been deducted because they were essentially of the nature of interest. The Court of Appeals of the Third Circuit allowed a similar deduction in *Lederer v. Penn Mut. Life Ins. Co.*, 258 Fed. 81; but in *Penn Mut. Ins. Co. v. Commissioner*, 92 F. (2d) 962, 970, held that the additional interest was in the nature of a dividend, and was not

deductible "as interest on indebtedness." On the other hand, the Seventh Circuit held that such excess interest was deductible in *Commissioner v. Lafayette Ins. Co.*, 67 F. (2d) 209 (C. C. A. 7), and the Board allowed a similar deduction in *Jefferson Standard Life Ins. Co.*, 44 B. T. A. 314. While the latter case involved a stock insurance company, a distinction between stock and mutual insurance companies was probably not intended by Congress. See remarks of Senator La Follette, 75 Cong. Rec. 11636. But it seems to us that a payment which may be made or withheld at the will of the directors of the company cannot be regarded as a payment of interest within the strict construction we are bound to adopt in construing an exemption statute. Under Section 163 (c) (6) (B) of the Revenue Act of 1942, Congress provided that:

"All amounts in the nature of interest, whether or not guaranteed, paid within the taxable year on insurance or annuity contracts (or contracts arising out of insurance or annuity contracts) which did not involve at the time of payment life, health, or accident contingencies are deductible."

Since the foregoing section was enacted it is true that excess interest dividends such as are here involved would be deductible like guaranteed interest. It seems clear that the statute was amended in order to make the excess interest dividends deductible as interest because theretofore they had not come within a strict construction of the statute and had been held by the Third Circuit to be outside its scope.*

The order of the Tax Court is modified so as to allow the deduction of guaranteed interest paid in connection with settlements of options exercised by the insured where they have been disallowed by that court and as thus modified is affirmed.

United States Circuit Court of Appeals, Second Circuit.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 18th day of August, one thousand nine hundred and forty-three.

Present: Hon. LEARNED HAND, Hon. AUGUSTUS N. HAND, Hon. JEROME N. FRANK, Circuit Judges.

* "It is believed that no distinction should be made based on the person choosing the method of payment and that the full amount of the interest paid instead of only the guaranteed interest should be considered as interest paid. The guaranteed interest where the insured exercises the option and the so-called excess interest dividends are in the nature of interest even though they may not come within a strict construction of that term." Senate Finance Committee, Report on Revenue Bill of 1942, 1943-2 P. H. Tax Serv., p. 16,016.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from The Tax Court of the United States

This cause came on to be heard on the transcript of record from The Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is modified in accordance with the opinion of this court and, as thus modified, is affirmed.

It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

D. E. ROBERTS, Clerk.

By A. M. BELL, Deputy Clerk.

[Order for mandate. United States Circuit Court of Appeals: Second Circuit. Filed Aug. 18, 1943. D. E. Roberts, Clerk.]

United States of America, Southern District of New York

I, D. E. Roberts, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 140, inclusive, contain a true and complete transcript of the record and proceedings had in said Court; in the case of The Equitable Life Assurance Society of the United States, Petitioner, v. Commissioner of Internal Revenue, Respondent, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 8th day of September, in the year of our Lord one thousand nine hundred and forty-three, and of the Independence of the said United States the one hundred and sixty-eighth.

D. E. ROBERTS, Clerk.

By A. M. BELL, Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 20, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, limited to the second question presented by the petition and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9993)